IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RESTORATION ASSOCIATION OF FLORIDA, INC., and FLORIDA PREMIER ROOFING LLC,

CASE NO.:

Plaintiffs,

v.

MELANIE S. GRIFFIN, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, DONALD SHAW, in his official capacity as Executive Director of the Construction Industry Licensing Board, and JAMES R. SCHOCK, in his official capacity as Chairman of the Florida Building Commission,

Defendants.
_____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Restoration Association of Florida, Inc. ("RAF") and Florida Premier Roofing LLC ("Florida Premier" and together with "RAF", "Plaintiffs"), by their undersigned counsel, sue Defendants, Melanie S. Griffin, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, ("Secretary Griffin"), Donald Shaw, in his official capacity as Executive Director of the Construction Industry Licensing Board, ("Executive Director Shaw"), and James R. Schock, in his official capacity as Chairman of the Florida Building Commission ("Chairman Schock" and, together with "Secretary Griffin" and "Executive Director Shaw, the "Defendants"), and allege:

INTRODUCTION

1. In a just-completed special session, the Florida Legislature approved legislation (SB 4-D) that unconstitutionally targets roofing contractors and the work they perform for homeowners. Rather than address factors within the property insurance industry that has led to its problematic volatility, the Florida Legislature chose to violate the rights of homeowners and these contractors – the individuals and businesses that repair the homes owned by Floridians damaged by extreme weather events such as hurricanes.

2. SB 4-D amends Section 553.844 of the Florida Statutes to include a new Subsection 5 that allows insurers to repair roofing systems when they should be replaced pursuant to Florida's existing Matching Statute – Section 626.9744(2). To place this bill and Section 553.844 into the proper context, the rationale for its inclusion in SB 4-D is somewhat of a misnomer. Plaintiffs seek to challenge this provision of SB 4-D because it infringes upon the rights of homeowners and roofing contractors who perform work under valid assignment of benefits (AOB) contracts.

3. Thus, the Florida Legislature's alleged rationale for enacting SB 2-D is equally inapt, even if relied upon by the State, to its purported justification in amending Section 553.844 as part of SB 4-D. Consequently, the below discussion regarding (i) the prevalence of property loss in Florida; (ii) the statutorily protected rights afforded to AOBs; (iii) the contractors' right to receive full compensation for work performed; (iv) the insurance companies' litigation tactics that created the allege property insurance crisis; and (v) the existing data on AOB lawsuits provide relevant explanations that counter the pretextual ones used to justify the infringement of Plaintiffs' rights, which is also at issue in a separate lawsuit involving the constitutionality of SB 2-D. *See Restoration Association of Florida et al. v. Griffin et al.*, Case No. 2022-CA-000903, currently pending in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.

4. Critically, the Matching Statute requires an insurance company to use replacement items for roofs that match quality, color, or size. If such matching cannot occur to the specific damaged area, the law mandates insurers to make reasonable repairs or replacement of items in adjoining areas so that the uniformity of a roof remains intact.

5. Matching damaged areas or sections of a roof can be difficult, especially for older roofs. A job done unevenly and not uniform can oftentimes result in a decrease in resale value, and a vicious cycle of constant repairs and replacements. Shingles that are not uniform, and of all different ages and designs, can also affect the structural integrity of the roof. For Floridians that experience frequent hurricanes and other extreme weather events, roof integrity is vital for a home.

6. Consequently, many homeowners prefer to replace damaged roofs when significant issues arise after a severe weather event. Yet, their insurance companies – corporations that reap the benefits of policy premiums – prefer to pay less and make repairs, exposing the homeowner to further issues in the future. The new statutory framework permits insurance companies to repair roofing systems without adhering to the Matching Statute in violation of Florida law.

7. The irreconcilable nature of this statutory conflict constitutes a due process violation under the Florida Constitution by seeming to impose a duty on a contractor to replace the roof but may allow the insurer to deny the ensuing legitimate claim. Plaintiffs cannot be required to choose which statute to follow when repairing or replacing roofs, and, at the same time, be subject to investigations, sanctions, and other penalties by Defendants based on their compliance with existing Florida law for claiming replacement costs.

8. Additionally, a detailed review of SB 4-D reveals it contains voluminous distinct subjects within the law, which violates the single-subject rule of the Florida Constitution. SB 4-D is unconstitutional for this reason alone. To permit SB 4-D to remain the law in this State

unduly burdens the rights of the backbone of Florida – the contractors that repair homes after problems occur, and certainly after disasters strike. The law should be declared unconstitutional, void, and of no effect.

NATURE OF THE ACTION

9. This is an action for a declaratory judgment pursuant to Ch. 86 of the Florida Statutes, requesting a declaration Secretary Griffin, Executive Director Shaw, and Chairman Schock, and their agencies, are without authority to interpret, investigate, sanction, or otherwise penalize Plaintiffs for any efforts to secure compensation for work performed complying with Florida's Matching Statute as opposed to Section 553.844. SB 4-D is unconstitutional and, thus, noncompliance with its requirements should not be a basis to discipline Plaintiffs or other similarly situated contractors, who typically perform the work under a valid AOB contract.

10. This action also seeks preliminary and permanent injunctive relief against not only the effectiveness of SB 4-D, but also any reliance on the law as a basis to sanction, penalize, or otherwise interfere with contractors' licenses to repair and replace homeowners' roofing systems pursuant to a valid AOB.

11. As more specifically set out below, each Plaintiff is affected by the subject legislation and has standing to bring this action.

JURISDICTION, PARTIES, AND VENUE

12. This Court has jurisdiction over this lawsuit pursuant to Art. V, §20(c)(3) of the Florida Constitution, as well as § 86.011 and §26.012(2)(a), (3), of the Florida Statutes.

13. **Restoration Association of Florida, Inc**. RAF is a Florida not-for-profit corporation with its principal place of business in Seminole County, Florida, and is a restoration contractors association whose mission is to serve as an advocate for independent contractors who

specialize in water, fire, and mold restoration. Its primary mission is to advocate for these professionals throughout Florida and to protect the right to use AOB contracts as a means to be paid for work performed on behalf of homeowners. Many of RAF's members are roofing contractors who regularly use AOBs as a payment tool. RAF's members would otherwise have standing to sue in their own right in this matter, but the cost of maintaining the above-captioned case would be prohibitive for any particular RAF member. A number of RAF's members are substantially affected by the legislation that could form the basis of discipline against them, and this legal challenge is within RAF's general scope of interest and activity.

14. The declaratory and injunctive relief requested in this case is of the type appropriate for RAF to receive on behalf of its members. This proceeding does not involve any claims for money damages by RAF or on behalf of its members. Moreover, protecting the contractors' rights to rely on Florida's Matching Statute when repairing or replacing roofs under a valid AOB is a statutory right in Florida germane to RAF's mission and purpose. Significantly, the claims asserted in this case by RAF do not require the participation of its individual members.

15. Based on the experience of RAF members, legitimate claims are often delayed, underpaid, or not paid by insurance companies at all, which requires these members to pursue their lawful rights and remedies in court. The irreconcilable conflict between Sections 553.844(5) and 626.9744(2) will have the effect of insurance companies denying RAF members their full compensation for work performed. RAF members believe Defendants, and the agencies they control, will accept complaints, seek responses, and sanction or otherwise penalize contractors for seeking full compensation for replacing roofing systems in reliance on the Florida Building Code and Florida's Matching Statute.

16. SB 4-D is unconstitutional on its face and as applied to RAF members because the new law deprives RAF members of rights that exist under the Florida Constitution and Florida law. Since RAF members frequently file lawsuits against insurance companies arising under residential property insurance policies and resulting from the unwarranted delay, underpayment, or denial of claims, RAF, on behalf of its members, requests a declaration of their rights.

17. **Florida Premier Roofing LLC**. Florida Premier is a Florida limited liability company with its principal place of business in Orange County, Florida. Florida Premier is a roofing company that has substantial experience in managing insurance claims, roofing projects, construction projects, and other interior damage issues for homeowners across Florida. Florida Premier's roofing services include, among other things, CertainTeed shingles, concrete/clay tiles, stone coated steel, as well as emergency services. Insurance claims have become a prevalent area of Florida Premier's business due to insurance companies' practices in delaying, underpaying, and denying valid claims. Florida Premier is a member of RAF.

18. Florida Premier is frequently an assignee under validly executed AOBs and will continue to be an assignee in the future. Strict adherence to industry guidelines and regulations are focal points of Florida Premier's business, which enables it to complete jobs for clients timely and efficiently. Based on Florida Premier's experience, legitimate claims are often delayed, underpaid, or not paid by insurance companies at all, which requires Florida Premier to pursue its lawful rights and remedies in court. The amount of money at issue in lawsuits brought by Florida Premier pursuant to AOBs is cumulatively substantial for its business. The irreconcilable conflict between Sections 553.844(5) and 626.9744(2) will have the effect of denying Florida Premier of the right to just compensation for work performed.

19. Florida Premier believes Defendants, and the agencies they control, will accept complaints, seek responses, and sanction or otherwise penalize contractors like Florida Premier for seeking for seeking full compensation for replacing roofing systems in reliance on the Florida Building Code and Florida's Matching Statute.

20. SB 4-D is unconstitutional on its face and as applied to Florida Premier because the new law deprives Florida Premier of rights that exist under the Florida Constitution and Florida law. Since Florida Premier frequently files lawsuits against insurance companies arising under residential property insurance policies and resulting from the unwarranted delay, underpayment, or denial of claims, Florida Premier requests a declaration of its rights.

21. **Secretary Griffin.** Secretary Griffin is sued in her official capacity as Secretary of the Florida Department of Business and Professional Regulation (the "DBPR"), which is located in Tallahassee, Florida. Pursuant to state law, Secretary Griffin oversees the Department of Business and Professional Regulation, which is responsible for licensing and regulating more than 1.4 million businesses and professionals in the State of Florida, including contractors covered by SB 4-D. The DBPR, under Secretary Griffin's direction, accepts and investigates complaints about violations of the law and/or alleged licensee misconduct reported by consumers, including, upon information and belief, those that are the result of SB 4-D's new enactments. *See* https://www.myfloridalicense.com/entercomplaint.asp?SID. RAF's members and Florida Premier are licensees subject to the regulations and disciplinary actions of Secretary Griffin's department.

22. **Executive Director Shaw**. Executive Director Shaw is sued in his official capacity as Executive Director of the Construction Industry Licensing Board (CILB), which is located in Tallahassee, Florida. Pursuant to state law, Executive Director Shaw oversees the CILB, which

has rulemaking authority to implement laws that affect the construction industry's licensees, including provisions added by SB 4-D. The CILB, a part of the Department of Business and Professional Regulation, also has the authority to conduct disciplinary proceedings against licensed contractors such as RAF members and Florida Premier for violations of Florida law. Significantly, the CILB implements those disciplinary actions through Executive Director Shaw and his staff. *See* FLA. STAT. §489.129.

23. **Chairman Schock**. Chairman Schock is the Chairman of the Florida Building Commission, which is located in Tallahassee, Florida. Pursuant to state law, it is a 19-member technical body who is responsible for the development, maintenance, and interpretation of the Florida Building Code. The Florida Building Commission is part of the Department of Business and Professional Regulation. Its members are appointed by the Governor and confirmed by the Senate. The Florida Building Commission is comprised of design professionals, contractors, and government experts in the multitude of disciplines governed by the Florida Building Code. This commission is charged with updating the Florida Building Code every three (3) years.

24. The Florida Building Commission issues "Declaratory Statements", which seek to resolve controversies and answer questions concerning the applicability of a statute, rule, or order through an administrative process pursuant to Florida Administrative Code – Chapter 28-105. As such, Plaintiffs are concerned that the Florida Building Commission will either not act or will resolve the conflict between statutes without considering the constitutional questions presented here. This constitutional analysis is outside of its expertise and administrative mandate, which will result in Secretary Griffin, Executive Director Shaw, and their respective agencies, relying on deficient interpretations of Florida law. Such a disjointed process cannot be a basis upon which Defendants can investigate, sanction, or otherwise penalize Plaintiffs.

25. Venue is proper pursuant to Section 47.011 and 47.041 of the Florida Statutes. The events giving rise to this action arose and occurred in Leon County, Florida, the causes of action alleged herein all accrued in Leon County, Florida, all of the Defendants conduct substantial business in Leon County, Florida, any enforcement of Defendants' authority against Plaintiffs would take place in Leon County, Florida, and Leon County is the principal situs of the government of the State of Florida.

26. All applicable conditions precedent to the filing of this lawsuit have been performed, waived, excused, or satisfied.

27. Plaintiffs retained the undersigned counsel to represent their interests in connection with the above-captioned case and are obligated to pay undersigned counsel reasonable attorneys' fees and costs for services rendered.

GENERAL ALLEGATIONS

A. PROPERTY LOSS IS A FREQUENT OCCURRENCE IN FLORIDA.

28. It is not a secret that property damage insurance claims are prevalent in Florida due to the occurrence of hurricanes, floods, and other storm-related events. Homeowners rely on their insurance companies and the policies purchased as life preservers after problems occur, and certainly after disasters strike.

29. In recent years, Florida has experienced an increase in extreme weather events that damage residential properties.[1] Studies suggest the types of storms Florida has experienced will become "more frequent and intense."[2] Homeowners usually purchase and pay premiums for insurance that is designed to "provide[] financial protection against loss due to disasters, theft and

[1] The Climate Reality Project, "Climate Change and Florida: What You Need to Know" (Oct. 16, 2018), *available at* https://www.climaterealityproject.org/blog/how-climate-change-affecting-florida.
[2] Environmental Protection Agency, "Climate Change Indicators: Weather and Climate," *available at* https://www.epa.gov/climate-indicators/weather-climate.

accidents" and that "pays to repair or rebuild your home if it is damaged or destroyed by fire, hurricane, hail, lightning or other disasters listed in your policy."[3]

30. Homeowners are advised by both insurers and by the State to "[p]urchase enough coverage to rebuild your home."[4] Home repair after a storm is a high priority. A home may be a resident's largest lifetime investment. Damage to a home can grow worse with neglect, which affects the building's structural integrity, and permits the development and growth of dangerous, health-threatening mold, carcinogens, or spores. Such damage also increases the vulnerability of the structure to milder weather events.

31. Storms can remove shingles from roofs, damage walls or siding, and break windows. After a home is damaged, homeowners are often advised to document the damage as soon as possible, which is especially important if a homeowner's insurance policy only covers certain types of damage.

32. To do so, the Florida Department of Financial Services advises consumers to first "obtain[] a repair estimate from a licensed contractor" to determine if "the damage exceeds your deductible by an amount that you believe to be sufficient to justify filing a claim with your insurance company, [and] then do so as soon as possible."[5]

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[3] Insurance Information Institute, "What is covered by standard homeowners insurance?," *available at* https://www.iii.org/article/what-covered-standard-homeowners-policy.

[4] *Id*. *See also* Florida Dep't of Financial Services, "Homeowners' Insurance: A Toolkit for Consumers," at 3 (*available at* https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/homeownerstoolkit.pdf).

[5] *Id*. at 29.

B. HOMEOWNERS' RIGHTS AND THE USE OF ASSIGNMENT OF BENEFITS CONTRACTS ARE STATUTORILY PROTECTED RIGHTS IN FLORIDA.

33. The Florida Legislature believes homeowners' rights are so critical that it codified a Homeowner Claims Bill of Rights (the "Homeowner Bill of Rights) into law, which is set forth in Section 627.7142 of the Florida Statutes. While the Homeowner Bill of Rights is not intended to list every right recognized under Florida law, it does state homeowners generally have the statutory right to choose the contractors that repair damage to a home with respect to an insurance claim.

34. In this connection, AOBs are frequently used in the property damage industry to make the claims process more efficient for the homeowner and the contractor. Fundamentally, an AOB is a written agreement that permits an insured to voluntarily assign his or her rights and insurance benefits to a third-party contractor.

35. Once signed, the contractor "steps into the shoes" of the policyholder and allows the contractor (i) to discuss the insurance claim with the carrier; (ii) to bill the insurer directly for work performed and materials furnished for the benefit of the insured; (iii) to be paid directly by the carrier; and (iv) if necessary, commence an action against the insurance company to collect amounts due and owing to the contractor.

36. AOBs are not new and have been used for a long time, especially during emergency weather situations. In Florida, AOBs are prevalent in the residential property context when homeowners suffer damage to their home and need to hire contractors to repair the issues. When damage does occur, immediate remediation is often required to protect against further storms, water leakage, or other types of damage and allows a homeowner to continue to reside on the property while preventing further serious damage to the home.

37. Here, AOBs are regulated in Florida pursuant to Section 627.7152 and 627.7153 of the Florida Statutes. These laws became effective in 2019 and were a direct legislative response to Office of Insurance Regulation (OIR) reports concerning litigation trends related to AOBs for property insurance claims, the alleged increases in costs related to such litigation, and the corresponding purported surges in annual policy premiums.

38. The Florida legislative staff analysis explained the statutes claimed to accomplish the following, which is not intended to be exhaustive:

a. Established requirements for the execution, validity, effect, and rescission of an AOB;

b. Capped the amount an assignee can receive under an AOB for a residential property insurance claim executed in an emergency;

c. Allowed a policy prohibiting an AOB, in whole or in part, but only under extremely limited and well-defined circumstances;

d. Transferred certain pre-lawsuit duties pursuant to the insurance contract to the assignee;

e. Set the formula that determines which party receives an award of attorneys' fees should litigation related to an AOB result in a judgment; and

f. Required insurers to report specified data on claims paid under an AOB.

39. Homeowners typically exercise their AOB rights under their insurance contracts so the contractors making the repairs can handle the claim without the need for a homeowner's constant involvement with the insurance company, an approach that many homeowners find preferable. Many homeowners lack extensive familiarity or experience with the claims process, which can be daunting and stressful. AOBs also allow repairs to be made without the homeowner fronting the cost of the remediation and then seeking reimbursement from insurers.

C. SB 4-D REGARDING ROOFING CONTRACTORS DEPRIVES THESE CONTRACTORS OF THEIR ABILITY TO RECEIVE FULL COMPENSATION FOR WORK PERFORMED.

40. When an insurance company delays, underpays, or denies a valid claim made by an assignee, the new law assures the contractor cannot receive the full amount due for the work performed. This result is antithetical to the manner in which Florida has operated for more than a century. Instead, the law creates a perverse incentive for an insurance company to continue practices that wrongfully delay, underpay, or deny claims and then force the contractor to file a lawsuit rendering collection of the claim economically detrimental altogether.

41. The result is to place such substantial burdens on AOBs that homeowners are more likely to be saddled with the costs of repair and battling with insurance companies to receive the benefits of the policies for which they have paid premiums. Such conflicts will undoubtedly favor insurance companies as repeat players in these controversies, while homeowners, who are not usually frequent litigants, are in a weak position to vindicate their interests. Additionally, SB 4-D stands in stark contrast to longstanding Florida public policy, which is aimed to assure payment to those who repair our homes and afford them the "greatest protection compatible with justice and equity." *Hendry Lumber Co. v. Bryant*, 138 Fla. 485, 490-91, 189 So. 710, 712 (1939).

42. Reflecting on these well-established public policies, the Supreme Court explained that depriving the contractor of payment for:

> [f]urnishing labor and material not only results in unjust enrichment of the lands but it is the very source of the laborer and materialman's bread and butter . . . . . No Legislative body in this country would deign to enact a law to separate the laboring man from his bread. Man's necessity for bread preceded his necessity for law. It is the staff of his life, the basis of his health, his culture, his religion, and every impulse, good or bad, that colors his thinking.

United States v. Griffin-Moore Lumber Co., 62 So. 2d 589, 590 (Fla. 1953).

43. The 1953 Florida Supreme Court, however, had not met nor could it have imagined the 2022 Florida Legislature would be so determined to separate the laboring man from his bread.

(i) SB 4-D regarding roofing companies is the byproduct of misleading information supplied by insurance companies and others.

44. The challenged act is a product of a special session called to allegedly address:

(a) "frivolous lawsuits" affecting the property insurance industry;

(b) two straight years of property insurance underwriting losses exceeding $1 billion;

(c) the insolvency or midterm cancellation of policies by several insurers; and

(d) the increased utilization of Citizens Property Insurance, the State of Florida's public insurer of last resort.

Gov. DeSantis Proclamation (Apr. 26, 2022), *available at* https://www.flgov.com/wp content/uploads/2022/04/SKM_C750i22042614070.pdf.

45. Upon information and belief, Governor DeSantis' Proclamation was based, in part, on information supplied to him by the insurance industry indicating the purported homeowner insurance crisis was created by contractors and their attorneys. Plaintiffs assert the insurance companies' financial losses, beyond the increase in extreme weather events, were self-inflicted, and a byproduct of a claims administration process that routinely involved delaying payment of claims, underpaying claims, and/or denying valid claims completely. Lawsuits are filed as an inevitable result.

46. In fact, depositions in these lawsuits revealed insurance companies systematically:

a. directed their personnel not to perform tests that would otherwise substantiate a valid claim;

b. removed damage estimates in reports;

c. included items in reports field adjusters did not believe to be true;

d. instructed its personnel not to write the word damage in any report, say the word damage, or write any damage estimates;

e. concluded the origin and cause of the property loss were due to reasons not covered in a homeowner's policy when field adjusters knew such statements were false;

f. concluded in reports that the property damage can be repaired instead of replacing items, effectively underpaying on a claim; and

g. denied valid Hurricane Irma claims without justification and regardless of whether a field adjuster observed damage.

47. Plaintiffs believe these types of practices are the tip of the iceberg, which resulted in widespread delay, underpayment, or complete denial of valid claims. In these circumstances, Plaintiffs assert the alleged "insurance crisis" was self-inflicted by the insurance companies themselves. Creating a massive backlog of claims that are delayed, underpaid, or completely denied had the inevitable result of homeowners and their assignees filing lawsuits on a grand scale to receive just compensation for their losses.

48. Litigation trends neither support the insurance companies' narrative for an overhaul of Florida law or SB 4-D regarding roofing contractors. Data published by reputable litigation management software providers such as CaseGlide reinforces the premise that contractors working under an AOB are not the root cause of Florida's alleged litigation crisis.

49. CaseGlide is routinely used by insurance company professionals and their defense counsel to manage litigation. A recent CaseGlide article discussed litigation trends and stated the following:

New Litigated Claims Drop 35% in August for Florida's Largest P&C Insurers

Florida Litigation Management Data Trends, August 2021

As the industry's leading claims litigation management software provider, CaseGlide compiles a broad swath of claims data that represent a variety of segments and geographies. One of the most interesting data sets that we regularly gather and analyze are litigated claims specific to the majority of Florida's largest P&C insurance organizations.

New litigated claims dropped sharply in August for Florida's largest P&C insurers. We recorded a decrease of 35% to 4,313 new litigated claims, down from July's figure of 6,663. The August drop is the second-largest month-over-month percentage decline in new litigated claims experienced in the past five years. The largest decline, occurring September 2017, was a 51% month-over-month drop, and coincided with Hurricane Irma's landfall in Florida.

Of the 17 largest Florida insurers we regularly monitor, all experienced a month-over-month decline in litigated claims in August. Seven insurers experienced a greater than 40% drop, and an additional seven saw between a 20 and 39% drop.

> "Although we typically see a drop off from summer highs in August or September, this year's sharp decline is certainly worth monitoring closely,"
>
> **Wesley Todd, CEO of CaseGlide**

"Although we typically see a drop off from summer highs in August or September, this year's sharp decline is certainly worth monitoring closely," said Wesley Todd, CEO of CaseGlide. "Florida Senate Bill 76 has undoubtedly contributed to some confusion in the marketplace and going forward we will be tracking Intent to Initiate Litigation Notices to better understand their effect on litigated cases in Florida. It's too early to judge the bill's impact yet, but we hope to share some findings in the near future."

AOB cases as a percentage of total new litigated cases in August were at 24%. The percentage of AOB cases hasn't varied much over the past 12 months, with the running average being 19.5%.

For 2021, the top 10 AOB contractors in the state represent 25% of all AOB-related new litigated claims, with the top contractor representing 6%.

Geographic distribution of new litigated claims continues to be dominated by the state's southern counties, with Miami-Dade accounting for 27% of claims, followed by Broward at 18% and Palm Beach at 7%. Those county percentages have stayed mostly consistent over the course of 2021.

CaseGlide remains committed to observing this data closely, monitoring to see if these patterns persist, and how the trends will impact insurers across Florida.

50. Most importantly, the Florida Senate's Bill Analysis and Fiscal Impact Statement (the "SB 4-D Bill Analysis") was prepared by the Professional Staff of the Committee on Appropriations and represents the best available information upon which legislators understand what SB 4-D sought to do and its effect on the state budget.

51. The SB 4-D Bill Analysis does not even mention the use of AOBs by roofing contractors and suits by assignees as the impetus of the alleged insurance crisis purportedly created by an increase in property damage litigation. *See* SB 4-D Bill Analysis, *available at* https://www.flsenate.gov/Session/Bill/2022D/4D/Analyses/2022s00004D.ap.PDF.

D. SB 4-D UNCONSTITUTIONALLY BURDENS ROOFING CONTRACTORS OF THEIR RIGHTS TO BE FULLY PAID FOR HARD WORK PERFORMED.

52. On May 26, 2022, Governor DeSantis signed SB 4-D into law, rendering it effective immediately. A copy of SB 4-D is attached hereto as **Exhibit A**.

53. Specifically, part of SB 4-D amends Section 553.844 of the Florida Statutes to include a new Subsection 5, and states:

> **Section 1** – amending Section 553.844 to add Subsection 5. Notwithstanding any provision in the Florida Building Code to the contrary, if an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. The Florida Building Commission shall adopt this exception by rule and incorporate it in the Florida Building Code. Notwithstanding s. 553.73(4), a local government may not adopt by ordinance an administrative or technical amendment to this exception.

Id. (emphasis added).

54. The law ostensibly permits insurance companies to repair, *instead of replace*, damaged residential roofs if the roof is more than 25% damaged, so long as it was previously built, repaired, or replaced in compliance with the 2007 Florida Building Code.

55. And, for those roof systems or roof sections that experience 25% or more damage, *only the repaired, replaced, or recovered portion needs to be constructed consistent with the current Florida Building Code in effect*.

56. This law codifies an exception to Section 1511.1.1 of the 2020 Florida Building Code (the "Building Code"). Section 1511.1.1 states:

> Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.

57. Pursuant to Section 1502 of the Building Code, a "roof section" is defined as follows:

> A separation or division of a roof area by existing joints, parapet walls, flashing (excluding valleys), difference of elevation (excluding hips and ridges), roof type or legal description; not including the roof area required for a proper tie-off with an existing system.

58. Put simply, the insurance industry wanted, and the Florida Legislature enacted, legislation aimed to <u>significantly increase</u> roof repairs after property loss and <u>substantially decrease the number of total roof replacements</u> when, in reality, they are vital to preserving a home after severe weather events such as hurricanes occur.

59. The dilemma created by the amendment is that it conflicts with Section 626.9744(2) – Florida's Matching Statute, which states:

> <u>when a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall</u>

> make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.

Id.

60. Critically, the Matching Statute requires, for example, replaced roof shingles to match in quality, color, and size to the undamaged roof shingles.

61. When this cannot occur, the insurer must make reasonable repairs or replace shingles in adjoining areas, and consider the uniformity of the roofing system when making this election.

62. The purpose and intent of Florida's Matching Statute cannot be reconciled with the new §553.844(5). Since the new law permits an insurer to *repair* instead of *replace* a roof area or a roof section when 25% more of the area or section is damaged, new Section 553.844(5) financially incentivizes insurance companies to repair roofs without considering the requirements of the Florida Building Code and the Matching Statute that mandate replacement.

63. The law is unconstitutional on its face and as applied to Plaintiffs.

(i) SB 4-D violates the single-subject rule.

64. Article III, § 6 of the Florida Constitution requires that "[e]very law shall embrace but one subject and matter properly connected therewith."

65. Plaintiffs assert the sweeping and omnibus nature of SB 4-D violates the single-subject rule and deprives even the most diligent of responsible citizens from discovering the type of legislative mischief the rule was intended to prevent. *See e.g., State v. Paulus*, 688 P.2d 1303, 1309 (Or. 1984) (stating that "one subject rule aims to enhance the likelihood that distinct policies will be judged rationally on their individual merits rather than being packaged to

attract support from legislators or constituencies with special interest in one provision and no worse than indifference toward other unrelated ones").

66. The single-subject rule prevents bills from being "designed to accomplish separate and disassociated objects of legislative effort." *State v. Thompson*, 163 So. 270, 283 (Fla. 1935). It requires there be a "cogent relationship" between the provisions for the bill to pass constitutional muster. *Bunnell v. State*, 453 So. 2d 808, 809 (Fla. 1984).

67. SB 4-D not only contains the challenged roofing amendments, but Plaintiffs assert the law also amends and creates other statutes that lack any cogent connection between the various provisions. The nearly five-page title used to signal each subject the bill addresses demonstrates this inescapable conclusion.

68. Without replicating the numerous pages of bill text here, some of the additional subjects include: voluminous statutes related to condominium associations and inspections; condominium reserves; recordkeeping requirements for condominium associations; condominium officer and director liability; developer inspection reports; and disclosure requirements to prospective condominium buyers.

69. By way of example, but not limitation, the establishment of mandatory structural inspections for condominium and cooperative buildings, SB 4-D § 3, lacks any cogent connection to regulating roofing contractors and repairing and/or replacing roofing systems in residential homes. SB 4-D implements standards under which an insurance company can opt to repair a roofing system as opposed to replacing it, which conflicts with Florida's Matching Statute and the Florida Building Code.

70. Similarly, there is no cogent connection between a condominium association's obligation to conduct a structural integrity reserve study, SB 4-D § 15, and the new standards for roofing contractors performing work on residential homes described above.

71. Indeed, the SB 4-D Bill Analysis only discusses the new §553.844(5); it does not analyze any of the other voluminous provisions of the new law, which is further support for a single-subject violation.

72. Compliance with the single-subject requirement is mandatory, and laws that embraces more than one subject must be declared unconstitutional. *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993). SB 4-D violates the rule.

(ii) SB 4-D violates the due process clause of the Florida Constitution.

73. The Florida Constitution guarantees due process of law. Art. 1 § 9, FLA. CONST.

74. At its most fundamental level, the constitutional protection prevents arbitrary or capricious state action so that the state's actions must further its purposes. *See Warren v. State Farm Mut. Auto. Ins. Co*., 899 So. 2d 1090, 1096 (Fla. 2005).

75. Even if a rational relationship test is utilized, SB 4-D violates due process because it is in direct conflict with Florida's Matching Statute and interferes with the ability to replace a roofing system when such replacement is required pursuant to Florida law.

76. Homeowners have a right to replace roofs consistent with the Matching Statute and the Florida Building Code. Ensuring the structural integrity of a home is paramount. Homeowners and their assignees have a right to be paid for work performed complying with existing Florida law.

77. The assignee, by virtue of the assignment, steps into the shoes of the insured.

78. As a result, an assignee who must sue to have the insurance policy honored is similarly situated to an insured in these circumstances.

79. Often, given the nature of roof repairs and replacements, time is of the essence. A leaky roof can cause considerably more expensive and extensive damage to a home unless repairs commence immediately. Because of the uncertainty created by the conflicting statutes concerning whether repair, partial replacement, or full replacement should take place, the homeowner and the assignee cannot decide how to proceed. Relying upon the insurance company, which has an adverse economic interest, cannot provide a quick and authoritative answer, creating insuperable procedural obstacles to determining what law applies, and implicating Plaintiffs due process rights.

80. There is no rational basis, let alone compelling government interest, to justify interfering with and denying the assignees right to be paid for work performed in compliance with the Matching Statute and the Florida Building Code.

81. Doing so will only encourage insurers to continue delaying, underpaying, and denying legitimate assignee claims, resulting in an unfair and improper windfall for recalcitrant and fraudulent insurance practices.

82. SB 4-D violates Plaintiffs' rights to due process. Consequently, Defendants cannot investigate, sanction, or otherwise penalize the licenses of Florida Premier and RAF's members for violations of unconstitutional laws.

COUNT I – DECLARATORY RELIEF

83. Plaintiffs reallege Paragraphs 1 through 82 above as if set forth fully herein.

84. This is an action for declaratory relief against Secretary Griffin, Executive Director Shaw, and Chairman Schock. Plaintiffs seek declaratory relief based on the specific and live controversy alleged – namely, the likelihood of investigations, interpretations of laws, sanctions,

and other penalties implemented by Defendants based on the unconstitutional deprivation rights set forth in SB 4-D.

85. Plaintiffs believe that the provisions described herein violate the Florida Constitution. SB 4-D cannot serve as a basis for Defendants' investigatory and disciplinary authority, nor as the basis for any regulations Defendants may seek to implement based on SB 4-D's provisions, which were discussed in great detail above.

86. Plaintiffs seek a determination from this Court that the approved SB 4-D is unconstitutional on its face and as applied to Plaintiffs, in whole or in part, is void, and of no force or effect.

87. There is a bone fide, actual, present, and practical need for the declaration.

88. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts.

89. There is some immunity, power, privilege, or right of Plaintiffs that is dependent upon the facts or the law applicable to the facts.

90. There are entities and individuals who have, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter of this dispute, either in fact or law.

91. The antagonistic and adverse interests are all before the court by proper process.

92. The relief sought herein is not a request for the Court to give legal advice or to answer questions propounded from curiosity.

COUNT II – INJUNCTIVE RELIEF

93. Plaintiffs reallege Paragraphs 1 through 82 above as if set forth fully herein.

94. This is an action for injunctive relief against Secretary Griffin, Executive Director Shaw, and Chairman Schock.

95. Plaintiffs would like to continue to engage in their licensed professions and businesses with the assurance their constitutional rights will not be violated.

96. Additionally, Plaintiffs should not be subject to sanctions or penalties by Defendants due to their interpretation of laws or Plaintiffs pursuing their lawful rights and remedies in court to receive full compensation for work performed, Plaintiffs services include work performed consistent with Florida's Matching Statute and the Florida Building Code.

97. The burdens created by SB 4-D are unconstitutional.

98. Plaintiffs have a substantial likelihood of success on the merits and have a clear legal right to relief.

99. Plaintiffs lack an adequate remedy at law for the deprivation of their rights.

100. Absent the entry of a preliminary and a permanent injunction, Plaintiffs will suffer irreparable harm to their constitutional and statutory rights and remedies, as well as to their rights under common law.

101. Injunctive relief will serve the public interest by assuring that Defendants will not rely on unconstitutional laws to discipline Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, RAF, on behalf of its members, and Florida Premier, respectfully request, as set forth in Counts I-II, that this Court enter a judgment in their favor and against Defendants, as follows:

1. Declare SB 4-D violates the single-subject rule of the Florida Constitution and is null and void;

2. Declare that SB 4-D violates Plaintiffs' rights to due process as set forth in the Florida Constitution. §553.844(5) conflicts with and cannot be reconciled with the matching obligations under §626.9744(2). Thus, §553.844(5) should be void and without effect;

3. Declare that Defendants cannot rely on the unconstitutional provisions of SB 4-D to investigate, sanction, or otherwise penalize Plaintiffs;

4. Issue an Order preliminarily and permanently enjoining the effectiveness of SB 4-D, as well as Defendants from investigating, sanctioning, or otherwise penalizing Plaintiffs based on the challenged provisions;

5. Award Plaintiffs all costs incurred in bringing this action; and

6. Award all other relief that this Honorable Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, RAF and Florida Premier, demand a trial by jury on all Counts so triable.

Dated: June 2, 2022

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An act relating to building safety; amending s. 553.844, F.S.; providing that the entire roofing system or roof section of certain existing buildings or structures does not have to be repaired, replaced, or recovered in accordance with the Florida Building Code under certain circumstances; requiring the Florida Building Commission to adopt rules and incorporate the rules into the building code; prohibiting local governments from adopting certain administrative or technical amendments to the building code; amending s. 468.4334, F.S.; requiring community association managers and community association management firms to comply with a specified provision under certain circumstances; creating s. 553.899, F.S.; providing legislative findings; defining the terms "milestone inspection" and "substantial structural deterioration"; specifying that the purpose of a milestone inspection is not to determine compliance with the Florida Building Code or the firesafety code; requiring condominium associations and cooperative associations to have milestone inspections performed on certain buildings at specified times; specifying that such associations are responsible for costs relating to milestone inspections; providing applicability; requiring that initial milestone inspections for certain buildings be performed before a specified date; requiring local enforcement agencies to provide certain written notice

to condominium associations and cooperative associations; requiring condominium associations and cooperative associations to complete phase one of a milestone inspection within a specified timeframe; specifying that milestone inspections consist of two phases; providing requirements for each phase of a milestone inspection; requiring architects and engineers performing a milestone inspection to submit a sealed copy of the inspection report and a summary that includes specified findings and recommendations to certain entities; providing requirements for such inspection reports; requiring condominium associations and cooperative associations to distribute and post a copy of each inspection report and summary in a specified manner; authorizing local enforcement agencies to prescribe timelines and penalties relating to milestone inspections; authorizing boards of county commissioners to adopt certain ordinances relating to repairs for substantial structural deterioration; requiring local enforcement agencies to review and determine if a building is unsafe for human occupancy under certain circumstances; requiring the Florida Building Commission to review milestone inspection requirements and make any recommendations to the Governor and the Legislature by a specified date; requiring the commission to consult with the State Fire Marshal to provide certain recommendations to the Governor and the Legislature by a specified date; amending s. 718.103, F.S.; providing a definition;

amending s. 718.111, F.S.; revising the types of records that constitute the official records of a condominium association; requiring associations to maintain specified records for a certain timeframe; specifying that renters of a unit have the right to inspect and copy certain reports; requiring associations to post a copy of certain reports and reserve studies on the association's website; amending s. 718.112, F.S.; specifying the method for determining reserve amounts; prohibiting certain members and associations from waiving or reducing reserves for certain items after a specified date; requiring certain associations to receive approval before waiving or reducing reserves for certain items; prohibiting certain associations from using reserve funds, or any interest accruing thereon, for certain purposes after a specified date; requiring certain associations to have a structural integrity reserve study completed at specified intervals and for certain buildings by a specified date; providing requirements for such study; conforming provisions to changes made by the act; restating requirements for associations relating to milestone inspections; specifying that if the officers or directors of a condominium association fail to have a milestone inspection performed, such failure is a breach of their fiduciary relationship to the unit owners; amending ss. 718.116 and 718.117, F.S.; conforming cross-references; amending s. 718.301, F.S.; revising reporting requirements

relating to the transfer of association control; amending s. 718.501, F.S.; revising the Division of Florida Condominiums, Timeshares, and Mobile Homes' authority relating to enforcement and compliance; requiring certain associations to provide certain information and updates to the division by a specified date and within a specified timeframe; requiring the division to compile a list with certain information and post such list on its website; amending s. 718.503, F.S.; revising the documents that must be delivered to a prospective buyer or lessee of a residential unit; revising requirements for nondeveloper disclosures; amending s. 718.504, F.S.; revising requirements for prospectuses and offering circulars; amending s. 719.103, F.S.; providing a definition; amending s. 719.104, F.S.; revising the types of records that constitute the official records of a cooperative association; requiring associations to maintain specified records for a certain timeframe; specifying that renters of a unit have the right to inspect and copy certain reports; amending s. 719.106, F.S.; specifying the method for determining reserve amounts; prohibiting certain members and associations from waiving or reducing reserves for certain items after a specified date; requiring certain associations to receive approval before waiving or reducing reserves for certain items; prohibiting certain associations from using reserve funds, or any interest accruing thereon, for certain purposes after a

specified date; requiring certain associations to have a structural integrity reserve study completed at specified intervals and for certain buildings by a specified date; providing requirements for such study; conforming provisions to changes made by the act; restating requirements for associations relating to milestone inspections; specifying that if the officers or directors of a cooperative association fail to have a milestone inspection performed, such failure is a breach of their fiduciary relationship to the unit owners; amending s. 719.301, F.S.; requiring developers to deliver a turnover inspection report relating to cooperative property under certain circumstances; amending s. 719.501, F.S.; revising the division's authority relating to enforcement and compliance; requiring certain associations to provide certain information and updates to the division by a specified date and within a specified time; requiring the division to compile a list with certain information and post such list on its website; amending s. 719.503, F.S.; revising the documents that must be delivered to a prospective buyer or lessee of a residential unit; revising nondeveloper disclosure requirements; amending s. 719.504, F.S.; revising requirements for prospectuses and offering circulars; amending ss. 720.303, 720.311, and 721.15, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 553.844, Florida Statutes, to read:

553.844 Windstorm loss mitigation; requirements for roofs and opening protection.—

(5) Notwithstanding any provision in the Florida Building Code to the contrary, if an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. The Florida Building Commission shall adopt this exception by rule and incorporate it in the Florida Building Code. Notwithstanding s. 553.73(4), a local government may not adopt by ordinance an administrative or technical amendment to this exception.

Section 2. Subsection (1) of section 468.4334, Florida Statutes, is amended to read:

468.4334 Professional practice standards; liability.—

(1)(a) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally,

skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

(b) If a community association manager or a community association management firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, the community association manager or the community association management firm must comply with that section as directed by the board.

Section 3. Section 553.899, Florida Statutes, is created to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(1) The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

(2) As used in this section, the terms:

(a) "Milestone inspection" means a structural inspection of a building, including an inspection of load-bearing walls and the primary structural members and primary structural systems as those terms are defined in s. 627.706, by a licensed architect or engineer authorized to practice in this state for the

purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.

(b) "Substantial structural deterioration" means substantial structural distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

(3) A condominium association under chapter 718 and a cooperative association under chapter 719 must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline as defined in s. 376.031, the condominium association or cooperative association must have a milestone inspection performed by December 31 of the year in which the building

reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. The condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the inspection. This subsection does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

(5) Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association by certified mail, return receipt requested.

(6) Within 180 days after receiving the written notice under subsection (5), the condominium association or cooperative association must complete phase one of the milestone inspection. For purposes of this section, completion of phase one of the milestone inspection means the licensed engineer or architect who performed the phase one inspection submitted the inspection

report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

(7) A milestone inspection consists of two phases:

(a) For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in paragraph (b), is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to subsection (8).

(b) A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report

pursuant to subsection (8).

(8) Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

(a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

(9) The association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of

the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

(10) A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

(11) A board of county commissioners may adopt an ordinance requiring that a condominium or cooperative association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

(12) The Florida Building Commission shall review the milestone inspection requirements under this section and make recommendations, if any, to the Legislature to ensure inspections are sufficient to determine the structural integrity of a building. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by

December 31, 2022.

(13) The Florida Building Commission shall consult with the State Fire Marshal to provide recommendations to the Legislature for the adoption of comprehensive structural and life safety standards for maintaining and inspecting all types of buildings and structures in this state that are three stories or more in height. The commission shall provide a written report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2023.

Section 4. Subsections (25) through (30) of section 718.103, Florida Statutes, are renumbered as subsections (26) through (31), respectively, and a new subsection (25) is added to that section, to read:

718.103 Definitions.—As used in this chapter, the term:

(25) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or

deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 5. Paragraph (b) of subsection (7) and paragraphs (a), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(7) TITLE TO PROPERTY.—

(b) Subject to s. 718.112(2)(o) ~~the provisions of s. 718.112(2)(m)~~, the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s.

718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports ~~report as~~ described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of

condominium property. Such record must be maintained by the association for 15 years after receipt of the report ~~s. 718.301(4)(p)~~.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, ~~and~~ the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th

working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association’s providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for

the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing

address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to

the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit 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. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for

the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page 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 front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or

restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 6. Paragraphs (g) through (o) of subsection (2) of section 718.112, Florida Statutes, are redesignated as paragraphs (i) through (q), respectively, paragraphs (d) and (f) of that subsection are amended, and new paragraphs (g) and (h) are added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an

eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not

enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide

an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or

transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best

of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to

all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (l) ~~(j)~~, and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative,

a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) ~~(j)~~ and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board

shall adopt the annual budget at least 14 days before ~~prior to~~ the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is ~~shall be~~ deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must ~~shall~~ adopt a separate budget of common expenses for each condominium the association operates and must ~~shall~~ adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do ~~need~~ not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount

must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the ~~each~~ reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. ~~This subsection does not apply to an adopted budget in which~~ The members of a unit-owner controlled ~~an~~ association may determine ~~have determined~~, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. Effective December 31, 2024, the members of a unit-owner controlled association may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g).

b. Before turnover of control of an association by a developer to unit owners other than a developer under ~~pursuant to~~ s. 718.301, the developer-controlled association ~~developer~~ may not vote ~~the voting interests allocated to its units~~ to waive the reserves or reduce ~~the~~ funding of the reserves ~~through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~. If a meeting of the unit owners has been called

to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. Effective December 31, 2024, members of a unit-owner controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other than their intended purpose ~~without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association~~.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized,

bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. An association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in subparagraphs a.-i., as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have

a structural integrity reserve study completed for each building on the condominium property that is three stories or higher in height.

3. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

(h) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 718.111(1)(a). Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal

delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 7. Paragraph (f) of subsection (8) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(8) Within 10 business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(k) ~~s. 718.112(2)(i)~~, an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the

request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed $150.

Section 8. Paragraph (b) of subsection (8) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(l) ~~s. 718.112(2)(j)~~.

Section 9. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended, and paragraph (r) is added to that subsection, to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was

issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property ~~common elements~~ comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

(r) A copy of the association's most recent structural integrity reserve study.

Section 10. Subsection (1) of section 718.501, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

718.501 Authority, responsibility, and duties of Division

of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination

and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as

follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to

pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such

other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division

has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk

assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall

include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status

of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department’s investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a

hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(3)(a) On or before January 1, 2023, condominium associations existing on or before July 1, 2022, must provide the following information to the division in writing, by e-mail, United States Postal Service, commercial delivery service, or hand delivery, at a physical address or e-mail address provided by the division and on a form posted on the division's website:

1. The number of buildings on the condominium property that are three stories or higher in height.

2. The total number of units in all such buildings.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(b) The division must compile a list of the number of buildings on condominium property that are three stories or

higher in height, which is searchable by county, and must post the list on the division's website. This list must include all of the following information:

1. The name of each association with buildings on the condominium property that are three stories or higher in height.

2. The number of such buildings on each association's property.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(c) An association must provide an update in writing to the division if there are any changes to the information in the list under paragraph (b) within 6 months after the change.

Section 11. Present paragraphs (b) and (c) of subsection (2) of section 718.503, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added to that subsection, and paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of that section are amended, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee

delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after ~~following~~ the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close before ~~prior to~~ the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close before ~~prior to~~ the expiration of the ~~said~~ voidability period. The developer must retain such ~~Said~~ proof ~~shall be retained~~ for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to ~~the provisions of~~ s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a

service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions <u>that</u> ~~which~~ will affect the use of the property and ~~which~~ are not contained

in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p).

19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must ~~shall~~ comply with ~~the provisions of~~ this subsection before ~~prior to~~ the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.~~,~~

2. Articles of incorporation of the association.~~,~~

3. Bylaws and rules of the association.~~,~~

4. Financial information required by s. 718.111.~~,~~

5. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and

718.301(4)(p), if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. ~~and~~ The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(b) ~~On and after January 1, 2009,~~ The prospective purchaser is ~~shall~~ also ~~be~~ entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to maintenance of the condominium property.

5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.

6. Owners' rights to inspect and copy association records and the limitations on such rights.

7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and

authority.

8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.

9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.

10. The voting rights of owners.

11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicuous type: "This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association's board of administration prevail over the contents of this publication."

Section 12. Paragraph (f) of subsection (24) of section 718.504, Florida Statutes, is amended, and paragraph (q) is added to that subsection, to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential

condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will

assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(f) The estimated operating budget for the condominium, ~~and~~ the required schedule of unit owners' expenses, and the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(q) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p), as applicable.

Section 13. Subsections (24) through (28) of section 719.103, Florida Statutes, are renumbered as subsections (25) through (29), respectively, and a new subsection (24) is added to that section, to read:

719.103 Definitions.—As used in this chapter:

(24) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study

must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 14. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those

unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, <u>structural integrity reserve studies,</u> and financial reports of the association. <u>Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.</u>

d. All contracts for work to be performed. Bids for work to

be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. A copy of the inspection reports described in ss. 553.899 and 719.301(4)(p) and any other inspection report relating to a structural or life safety inspection of the cooperative property. Such record must be maintained by the association for 15 years after receipt of the report.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. A renter of a unit has a right to inspect and copy only the association's bylaws and rules and the inspection reports described in ss. 553.899 and 719.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location,

notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members and prospective purchasers,

and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this

subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the

owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 15. Paragraphs (k) through (m) of subsection (1) of section 719.106, Florida Statutes, are redesignated as paragraphs (m) through (o), respectively, paragraph (j) of subsection (1) is amended, and new paragraphs (k) and (l) are added to subsection (1) of that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must ~~shall~~ be detailed and must ~~shall~~ show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before ~~prior to~~ the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is ~~shall be~~ deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must ~~shall~~ include reserve accounts for capital expenditures and deferred maintenance. These accounts must ~~shall~~ include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance

expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must ~~shall~~ be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the ~~each~~ reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. ~~This paragraph shall not apply to any budget in which~~ The members of a unit-owner controlled ~~an~~ association may determine ~~have~~, at a duly called meeting of the association, ~~determined~~ for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. Effective December 31, 2024, a unit-owner controlled association may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k) ~~However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the~~

~~first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Before ~~Prior to~~ turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended ~~without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association~~. Effective December 31, 2024, members of a unit-owner controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (k) for purposes other than their intended purpose.

(k) *Structural integrity reserve study.*—

1. An association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height that includes, at a minimum, a study of the following items as

related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in subparagraphs a.-i., as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the cooperative property that is three stories or higher in height.

3. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer’s and director’s fiduciary

relationship to the unit owners under s. 719.104(8).

(l) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 719.104(8)(a). Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 16. Paragraphs (p) and (q) are added to subsection (4) of section 719.301, Florida Statutes, to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a

majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

(q) A copy of the association's most recent structural integrity reserve study.

Section 17. Subsection (1) of section 719.501, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units, complaints related to the procedural completion of the structural integrity reserve studies under s. 719.106(1)(k), and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division shall have the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid

in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings

and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply

with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the cooperative residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the

division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the cooperative documents governing such cooperative community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State’s office on a biennial basis, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of cooperatives which were rendered by the division during the previous year.

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

(k) The division shall provide training and educational programs for cooperative association board members and unit owners. The training may, in the division’s discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(l) The division shall maintain a toll-free telephone number accessible to cooperative unit owners.

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the

complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of cooperative disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of voluntary mediators only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any

person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(3)(a) On or before January 1, 2023, cooperative associations existing on or before July 1, 2022, must provide the following information to the division in writing, by e-mail, United States Postal Service, commercial delivery service, or hand delivery, at a physical address or e-mail address provided by the division and on a form posted on the division's website:

1. The number of buildings on the cooperative property that are three stories or higher in height.

2. The total number of units in all such buildings.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(b) The division must compile a list of the number of buildings on cooperative property that are three stories or higher in height, which is searchable by county, and must post the list on the division's website. This list must include all of the following information:

1. The name of each association with buildings on the cooperative property that are three stories or higher in height.

2. The number of such buildings on each association's property.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(c) An association must provide an update in writing to the division if there are any changes to the information in the list under paragraph (b) within 6 months after the change.

Section 18. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 719.503, Florida Statutes, are amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may ~~shall~~ not close for 15 days after ~~following~~ the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close before ~~prior to~~ the expiration of the 15 days. The developer shall retain in his or her records a separate signed agreement as proof of the buyer's agreement to close before ~~prior to~~ the expiration of the ~~said~~ voidability period. The developer must retain such ~~Said~~ proof ~~shall be retained~~ for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to ~~the provisions of~~ s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the

association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions that ~~which~~ will affect the use of the property and ~~which~~ are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.

19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with ~~the provisions of~~ this subsection before ~~prior to~~ the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of all of the following:

1. The articles of incorporation of the association.~~,~~

2. The bylaws~~,~~ and rules of the association.

3. ~~,as well as~~ A copy of the question and answer sheet as provided in s. 719.504.

4. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.

5. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

Section 19. Paragraphs (q) and (r) are added to subsection (23) of section 719.504, Florida Statutes, to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to

each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(q) A copy of the inspector-prepared summary of the

milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.

(r) The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

Section 20. Paragraphs (d) and (k) of subsection (10) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(10) RECALL OF DIRECTORS.—

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under the applicable procedures in ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or a petition under ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the parcel owner representative shall be named as respondents.

Section 21. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted by the division. In addition, the department shall conduct binding arbitration of election disputes between a member and an association in accordance with s. 718.1255 and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding.

Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 22. Subsection (6) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(6) Notwithstanding any contrary requirements of s. 718.112(2)(i) ~~s. 718.112(2)(g)~~ or s. 719.106(1)(g), for timeshare plans subject to this chapter, assessments against purchasers need not be made more frequently than annually.

Section 23. This act shall take effect upon becoming a law.