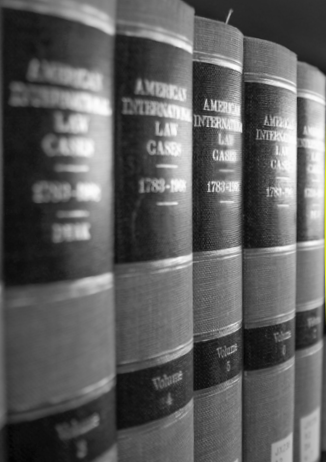




RUGGIERI  
LAW FIRM



# QUARTERLY NEWSLETTER

APRIL 2024





# Q1 Review – Legal Update

FRANK A. RUGGIERI

---

Dear Valued Clients and Business Partners:

I am pleased to announce the resumption of our quarterly newsletters. We are committed to providing our valued clients and business partners regular updates concerning developments in Community Association law and issues of significant impact to the communities we serve.

This first installment will be devoted to looking forward to current pending legislation as well as a brief summary of the legislative changes and significant appellate decisions in Florida from 2023. We look forward to meaningful engagement with our clients and business partners concerning the significant developments taking place in Community Association law.

## 2023 LEGISLATION

Please note that our firm is proud to offer our 2023 "Legal Update", approved by the DBPR for two (2) hours of continuing education credit for Community Association Managers. We likewise provided a legislative alert when the new laws were adopted in July 2023 (with some having earlier effective dates). This shall serve to highlight the most significant changes from 2023 and is not an exhaustive discussion of the legislative changes.

### CONDOMINIUMS-MILESTONE INSPECTIONS AND SIRS

- Alters deadline date for the statutory "milestone inspection" (30 years of age before 7-1-22 = 12-31-24; between 7-1-22 and 12-31-24 = 12-31-25).
- Removes 3 mile/25 year deadline and leaves it up to local building officials as to any "local circumstances" (including proximity to salt water) which merit requiring the MI be completed in less than 30 years from CO (25 years).
- Now requires a majority of the total voting interests to waive/partially fund reserves/use reserves for different purpose.
- Allows an Association required to complete the MIR on or before 12/31/26 to complete the SIRS simultaneously but in no event later than 12/31/26.
- Clarifies that officers and directors commit a breach of fiduciary duty only where they willfully and knowingly fail to complete a SIRS.

### HOMEOWNERS ASSOCIATIONS

- Prohibits application of covenants and rules to restrict property owners or their tenants from installing, displaying, or storing any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel including artificial turf, boats, flags, recreational vehicles, and animal sacrifice facilities.
- Notices of all board (and some other) meetings must specifically identify agenda items.
- Provides for electronic notice and conduct of fining hearings (owner's option)

## SIGNIFICANT APPELLATE DECISIONS FROM 2023

***McConico v Morgan's Mill*** - there are now several appellate decisions in Florida which arguably imply that a homeowners association must at least try to exercise "self-help" by entering upon the lot to correct a violation of the covenants before it can obtain an injunction ordering the homeowner to correct the violation. The trend has become significant but our firm maintains that the appellate decisions are either based upon poor language in the specific covenants involved or further appellate rulings are needed to clarify Florida law in this regard.



***Huck v Kenmare Commons*** - this case involves an existing covenant which prohibits on street parking and the Developer's transfer of title to the streets to the local municipality to avoid the maintenance responsibilities associated with the roads. The court ultimately ruled that the covenant prohibiting on street parking failed to qualify as an enforceable covenant running with the land due to the change in status of title to the common area roadways following the dedication to the city of Tallahassee, and the limited nature of the restriction, which the court held did not impact use of individual Lots. The impact of this case is arguably limited to the circumstances as the transaction involves an actual transfer of title of the roads to the city of Tallahassee.

***Desch v South Fork of Hillsborough County II*** - HOA documents provided for imposition of an individual assessment for legal fees and costs associated with enforcement. Board apparently failed to take a specific vote to "levy" the individual assessment and the court therefore found the assessment to be invalid. The court distinguished language which provides that an expense "shall constitute an individual assessment", which would not require separate board action to levy the assessment. This reinforces the point and advice we have given to many of our clients over the years that a board vote must still be taken to "levy or impose" an individual assessment associated with specific enforcement costs and one homeowner. We also suggest the individual homeowner be given '14 days' notice of the meeting where the assessment will be adopted.

## 2024 PENDING LEGISLATION

As always, we caution that pending legislation making its way through legislative committees is just as likely not to succeed or be adopted as it is to be approved by the legislature. Consequently, this should be kept in mind as the pending legislation is reviewed.

There are several pieces of pending legislation but this article will be limited to the most significant, being HB 1203. This bill contains numerous provisions affecting community associations, several which are of significant concern.

**468.4334** - imposes additional requirements on CAMs to attend at least one meeting a year, provide all contact information including hours of availability and a summary of duties to the board, post this information on the Association website, and provide all members with contracts if requested, which must be maintained in the official records.

**468.4337** - imposes new continuing education requirements on CAMs. They must now complete at least five hours of continuing education biennially specifically related to HOA's, three hours of which must relate to record keeping.

**720.303(1)** - CAMs are now subject to 617.0830 and obligations regarding fiduciary duties.

**720.303(4)** - incorporates the condominium official records requirements for posting of documents on the Association website for HOA's with 100 or more parcels. Requirements regarding notice and posting of information on the website previously adopted in Chapter 718 would be added to 720. Also requires adoption of a record access policy.

**720.303(13)** - use of debit cards would be prohibited, much like condominiums. Creates avenue for an owner to make a written request for a detailed accounting of amounts owed to the Association which must be provided within 15 business days. Homeowner is limited and cannot make another request for another 90 days following the initial request.

**720.3033** - a "written certification" by a new board member is no longer sufficient for the statutory educational requirements which must now include completion of a board member certification class by a state approved education provider.

**720.3035** - Association must "reasonably and equitably" apply and enforce guidelines for architectural modifications and cannot enforce or adopt rules that limit modifications which are not visible from the parcel's frontage or adjacent parcels or common areas. Association must refer with specificity to the rule or covenant the Association is relying upon in denying an application (aesthetic discretion?)

**720.3045** - common areas and community golf courses are now added to the list for purposes of determining whether a modification is "visible" from adjacent parcels.

**720.305** - creates minor additional requirements for fining including a requirement that the hearing be conducted within 90 days after issuance of the notice, requires notice of the outcome of the hearing within seven days, and prohibits imposition of a fine cured before the hearing takes place. Prohibits fining for garbage receptacles and holiday decorations.

**720. 3075** - on street parking prohibitions may not prohibit an owner from parking in any area governed by state, county and municipal regulations. Commercial vehicles may be parked in the driveway regardless of restrictions to the contrary.

**720.3085** - clarifies that interest on delinquent assessments is based on simple interest, not compound. In other words, interest must be calculated based upon the running assessment balance only and should not calculate interest based upon additional charges, including accumulated interest.

## UPCOMING EVENTS

6/19/2024 – HOA Board Certification Webinar

10/2/2024 – HOA Board Certification Webinar

If you have any questions, email us at [contact@ruggierilawfirm.com](mailto:contact@ruggierilawfirm.com).

### ORLANDO

13000 Avalon Lake Dr.  
Ste. 305  
Orlando, FL 32828

P (407) 395-4766  
F (407) 890-5177

### MELBOURNE

6767 N. Wickham Rd.  
Ste. 400-H  
Melbourne, FL 32940

P (321) 241-4770  
F (321) 241-4771

CORRESPOND TO ORLANDO



RUGGIERI  
LAW FIRM