

FL Statute 718 Legislative Changes 2023

Detail Information Provided by Paul St. Clair (Based on Legislative Summaries)

During the 2023 Legislative session, the following bills effecting condominiums were approved:

- Senate Bill 154 – Association Milestones & SIRS Glitch Bill
- House Bill 437 – Property Owners’ Right to Display Flags
- Senate Bill 286 – Legal Instruments
- House Bill 837 – Civil Remedies

Senate Bill 154 – Association Milestones & SIRS Glitch Bill

1. Milestone Inspections

The bill revises the milestone inspection requirements for condominium and cooperative buildings that are three or more stories in height to:

- Address inspection of a building’s load-bearing elements and primary structural members and systems. This inspection includes structural elements designed to provide support and stability for the vertical or lateral loads of the overall structure.
- Require a milestone inspection to be completed by December 31st of the year in which the building reaches 30 years of age, then every 10 years thereafter. Buildings that reach 30 years of age:
 - Prior to July 1, 2022, must have their initial milestone inspection completed before December 31, 2024.
 - After July 1, 2022, but prior to December 31, 2024, are to have an initial milestone inspection by December 31, 2025.
- Delete the 25-year milestone inspection requirements for buildings that are within three miles of the coastline.
- Authorize local agencies (e.g., town building department) that are responsible for enforcing the milestone inspection requirements the option to set a 25-year, and every 10 years thereafter, inspection requirement if justified by local environmental conditions, including proximity to seawater.
- Authorize the local enforcement agency to extend the inspection deadline if the association has entered into a contract with an architect or

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engineer to perform the milestone inspection and it cannot reasonably be completed before the deadline.

- Permit local enforcement agencies to accept an inspection and report that was completed before July 1, 2022, if the inspection and report substantially comply with the milestone requirements; however, associations must still comply with the unit owner notice requirements. If a previous inspection was accepted, the deadline for a subsequent 10-year re-inspection is based on the date of the previous inspection.
- Allow inspection services to be provided by a team of design professionals with an architect or engineer acting as a registered design professional in charge.
- Provide that the condominium or cooperative association is responsible for all costs associated with the inspection.
- Require associations to give unit owners notice about the inspection deadlines, electronically or by posting on the association's website, within 14 days after receiving the initial milestone inspection notice from local enforcement agency.
- Require the milestone inspector to submit a phase two progress report to the local enforcement agency within 180 days of submitting the phase one inspection report.
- Clarify that an association must distribute a copy of the summary of the inspection reports to unit owners within 45 days of its receipt.
- Require an association to repair damage identified in an inspection within a year, depending on local ordinances.

The Florida Building Commission is required by the bill to establish by rule a building safety program to implement the milestone inspection requirements within the Florida Building Code. The commission must specify the minimum requirements for the commission's building safety program by December 31, 2024, including inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority having jurisdiction.

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2. Flood Insurance

The bill exempts unit owner policies from the requirement that all personal lines residential policies issued by the Citizens Property Insurance Corporation must include flood coverage.

Condominium units in which personal property is covered under a flood master policy or located above specific floors may not be required to have flood insurance.

3. Governance

Regarding the governance of condominium or cooperative, the bill:

- Clarifies that any unit owner and any person authorized by any owner as his or her representative may inspect the official records of the association; and
- Excludes insurance premiums from the calculation which permits members to petition for a substitute budget if assessments increase by 115 percent.

4. Structural Integrity Reserve Study (SIRS)

The reserve funding requirements relating to condominium and cooperative associations are revised by the bill to:

- Require associations that are subject to the structural integrity reserve study (SIRS) requirement to base a budget adopted on or after January 1, 2025, on the findings and recommendations of the association's most recent SIRS.
- Clarify that reserves are required for the SIRS items for which the association is responsible under the condominium declaration.
- Clarify that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the SIRS study may recommend a deferred maintenance expense amount for such item.
- Permit associations that are not subject to the SIRS requirement to waive reserves, or use them for alternate purposes, if approved by a

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majority vote of the total voting interests of the association. Previous requirements were for a majority of those present at a meeting in which quorum was obtained.

- Permit multicondominium associations to waive reserves if an alternative funding method has been approved by the division.
- Multicondominium associations operating at least 25 condominiums can use a line of credit as an alternate source for reserve funding.
- Provide that reserve assessments may be adjusted for inflation.

The bill amends the SIRS requirements to:

- Limit the SIRS requirement to residential condominiums and cooperatives.
- Clarify that the SIRS recommendation must include a reserve funding schedule.
- Include the building structure as a SIRS building component, consisting of load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706, F.S., and delete “floor” and “foundation” from the list.
- Permit the visual inspection portion of the SIRS to be verified by an engineer or architect.
- Permit persons who have been certified as a reserve specialist, or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform or verify the visual inspection portion of the SIRS.
- Permit associations that are required to complete a milestone inspection on or before December 31, 2026, to complete the SIRS simultaneously with the milestone inspection, but the associations must complete the SIRS by December 31, 2026.
- Permit associations to satisfy the SIRS requirement with a previous milestone inspection, or an inspection performed for a similar local requirement, if the inspection had been performed within the previous five years.

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- Find a director liable for a breach of fiduciary duty who “willful and knowing” does not comply with the new reserve requirements.

5. Dispute Mediation

Effective July 1, 2027, the bill permits condominium and cooperative unit owners to use the mediation process in this section for specified disputes related to compliance with the milestone inspection or SIRS requirements.

6. Developer Turnover to Association Control

The bill permits reserve specialists and professional reserve analysts to prepare the developer’s turnover inspection report in addition to engineers and architects and adds the turnover inspection report to the required presale disclosures.

The bill also provides additional presale notice requirements in contracts for sales of a unit by a developer or nondeveloper. A developer and a nondeveloper must give a prospective buyer of a condominium or cooperative unit a copy of a turnover inspection report completed on or after July 1, 2023, if applicable, and a copy of the inspector-prepared summary of the milestone inspection, if applicable. Similar to current contract notice requirements, the prospective buyer of a unit must receive these documents more than three days before closing for sales by a nondeveloper or 15 days before closing for sales by a developer. A contract that does not conform to these notice requirements is voidable at the option of the purchaser prior to closing.

7. Funding

The bill also provides an appropriation (\$1,301,928 recurring and \$67,193 nonrecurring) to the Division of Florida Condominiums, Timeshare, and Mobile Homes within the Department of Business and Professional Regulation to implement the requirements in the bill, including funds for 10 additional full-time employees.

House Bill 437 – Property Owners’ Right to Display Flags

The bill allows unit owners in condominium associations to display one portable and removable flag on Patriot Day (September 11) that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.

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Senate Bill 286 – Legal Instruments

The bill amends laws relating to various legal instruments.

The bill defines the term “witness” in the statute authorizing electronic signatures, specifying that the term means a person whose electronic signature is affixed to an electronic record to attest or subscribe to a principal’s signature.

Regarding statutes governing foreclosures on mortgages and liens, the bill:

- Expands the scope of existing law on the finality of a clerk's deed following foreclosure sale to apply to any form of lien, not just mortgage foreclosure.
- Requires the foreclosure court to award attorney fees to a senior lienholder when a junior lienholder wrongfully tries to foreclose a senior lien. The bill also reaffirms the common law rule that a superior lien may not be foreclosed by a junior lienholder.
- Expands application of an assignment of rents to apply to a successor landowner and adds that regular association fees (e.g., homeowner association, condominium, or co-op) may be paid from the rent collected. An assignment of rents (if authorized by the mortgage terms) is a temporary relief allowing a foreclosing lienholder to collect rents from the property during the pendency of the foreclosure case and use those rents for upkeep of the property.
- Expands application of an order to show cause procedure in foreclosure law to allow use of the procedure when a successor landowner is being foreclosed. The current order to show cause procedure compels the defendant to either resume making regular payments or vacate the premises but is only applicable when the mortgagor still holds title to the property.

House Bill 837 – Civil Remedies

The bill (Chapter 2023-15, L.O.F.) makes the following changes to Florida’s civil justice system:

- Provides that a contingency fee multiplier for an attorney fee award is appropriate only in a rare and exceptional circumstance, adopting the federal standard.

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- Repeals Florida’s “one-way” attorney fee provisions for insurance cases under which plaintiffs that obtained a favorable judgment against an insurer were entitled to an award of reasonable attorney fees.
- Maintains the ability to award attorney fees to an owner, contractor, subcontractor, laborer, or materialman that prevails in a claim against a construction surety bond.
- Creates a limited ability to recover attorney’s fees from an insurance company after a total coverage denial through a declaratory judgment action.
- Reduces the statute of limitations for general negligence cases from four years to two years, while providing protections to servicemembers during terms of active duty which materially affect the servicemember’s ability to appear.
- Changes Florida’s comparative negligence system from a “pure” comparative negligence system to a “modified” comparative negligence system, whereby a plaintiff who is found to be more than 50 percent at fault for his or her own harm may not recover damages from any defendant. The new comparative negligence standard does not apply to causes of action for personal injury or wrongful death arising out of medical negligence.
- Modifies Florida’s “bad faith” framework to:
 - Provide an insurer has no liability for a bad faith involving a liability insurance claim if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receipt of the claim and sufficient evidence to support the claim.
 - Allow an insurer, if there are multiple claimants in a single action, to limit the insurer’s bad faith liability if, within 90 days after receiving notice of competing claim in excess of the policy limits, the insurer pays the total amount of the policy limits to the court through an interpleader action or, through binding arbitration agreed to by all parties, making the entire policy limits available for payment to the competing third-party claimants.
 - Provide that negligence alone is not enough to demonstrate bad faith.

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- Allow the trier of fact in any bad faith action to consider whether the insureds, claimants, and their representatives acted in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the insurance claim. If such parties did not act in good faith toward the insurer, the trier of fact may reasonably reduce the amount of bad faith damages awarded against the insurer.
- Applies the offer of judgment statute to any civil action involving an insurance contract.
- Specifies that certain evidence is admissible to calculate medical damages in personal injury or wrongful death actions. These changes modify the collateral source rule in a way that allows the parties to present evidence of actual medical costs or evidence that better approximates medical costs that may be incurred by a claimant.
- Requires the trier of fact in a negligent security action against the owner, lessor, operator, or manager of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of a third party, to consider the fault of all persons who contributed to the injury.
- Provides that the owner or principal operator of a multifamily residential property which substantially implements certain security measures on that property is presumed to not be negligent in connection to a criminal act occurring on the premises which are committed by third parties who are not employees or agents of the owner or operator.
- Provides that the new two-year statute of limitations for negligence actions applies prospectively to causes of action accruing after the effective date of the bill, that the remainder of the bill applies to causes of action filed after the effective date, and that the bill shall not be construed to impair any right under an existing insurance contract.

These provisions were approved by the Governor and took effect on March 24, 2023.