

ROSS EARLE BONAN ENSOR & CARRIGAN, P.A.

ATTORNEYS AT LAW

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GARY E. SIMMONS, JR.
KATE E. BRADFORD
KURT A. McDAVID

+CERTIFIED CIRCUIT CIVIL MEDIATOR

BOARD CERTIFIED IN CONDOMINIUM*
& PLANNED DEVELOPMENT LAW

February 26, 2024

Via email only to:
themcos@aol.com

Board of Directors
Regency Island Dunes Association, Inc.
8640 S. Ocean Drive
Jensen Beach, FL 34957

Dear Board Members:

First, let us take this opportunity to thank you for considering our firm to act as legal counsel for your Association.

The purpose of this letter will serve to explain the terms of our representation and the retainer agreement that we utilize between our firm and the Association.

Our firm of eight (8) attorneys is available for representation and consultation for the Association at any time.

The current hourly rates of our legal staff members for general representation are as follows:

<u>Attorneys</u>	<u>Rate</u>
Deborah L. Ross	\$350.00
David B. Earle	\$350.00
Elizabeth P. Bonan	\$350.00
Jacob E. Ensor	\$300.00
John P. Carrigan	\$300.00
Kate E. Bradford	\$250.00
Gary E. Simmons, Jr.	\$200.00
Kurt A. McDavid	\$200.00

Paralegal / Research Assistant

Paralegal	\$ 90.00
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*** These rates are subject to change from time to time upon written notice from the firm. Non-foreclosure related litigation rates may differ and may be the subject of a separate retainer agreement.*

February 26, 2024
Page 2 of 2

We charge only for the time actually spent on any project, phone call or conference and are available to attend meetings upon prior request. There is no advance "retainer fee" required.

We send out a monthly itemized statement and we request payment within thirty (30) days. Our statements show the individual performing the service, the service performed, the time expended and the individual's rate. We also bill for costs and out of pocket expenses such as long distance phone charges, title searches, copies, postage, etc. However, we never incur any significant costs on behalf of a client without first consulting and receiving approval. Any bills not paid within thirty (30) days shall be subject to an interest charge of one and one-half percent (1 ½ %) per month. In the event that it is necessary to institute legal proceedings to collect the firms' fees and costs, the firm will also be entitled to a reasonable attorney's fee and costs of collection, even if such services and costs are provided by the firm.

We request of all clients that they provide our office with a complete copy of their recorded Association documents, including rules, regulations and policies and also that they designate contact persons who will be responsible for coordination and communication with our office. Our staff will be instructed to refer calls from any other owner or individual back to the Association. Of course, we will always accept calls if so directed.

By signing this letter, you authorize our firm to order an Association document search from a licensed title company to ensure that we have a complete and accurate set of all of the Association's recorded governing documents. A copy will also be provided to you upon request. If the terms of this letter meet with your approval, please sign below, and return the original to our office, (retaining a copy for your files), along with the enclosed contact sheet.

If there are any questions on this or any other issue, please do not hesitate to give us a call.

Sincerely,

ROSS EARLE BONAN-ENSOR & CARRIGAN, P.A.

By: 
Deborah L. Ross, Esquire

Enclosures

I have read and reviewed the contents of this letter and concur with the terms thereof.

Regency Island Dunes
Association, Inc.

Its _____

REGENCY ISLAND DUNES ASSOCIATION, INC.
BOARD OF DIRECTORS

Designated
Contact Position Name Phone Number/Email Address

Y or N _____

Y or N _____

Y or N _____

Y or N _____

Y or N _____

Y or N _____

Mailing addresses for the Association:

Correspondence:

Accounting & Payments:

Billing:

If applicable:

Association Office No. _____ Office Hours: _____

Association Fax No. _____

Association Email: _____

Manager's Name/Company: _____

Phone Number: _____

Additional information requested:

Annual Meeting Held: _____

Are you a 55+ Community? Yes No

Number of Units/Lots: _____

Fiscal Year End: _____

Name of Registered Agent: _____

Completed by: _____

Date: _____

ROSS EARLE BONAN ENSOR & CARRIGAN, P.A.

819 SW Federal Highway - Suite 302

Stuart, Florida 34994

Telephone: (772) 287-1745

Facsimile: (772) 287-8045

FIRM RESUME

The Law Firm

Ross Earle Bonan & Ensor, P.A. was formed in September of 2003 by three long-time local practitioners, Deborah Ross, David Earle and Elizabeth Bonan. The law firm and its eight attorneys engage in a general civil practice which concentrates in a wide variety of legal services to Community Associations, business organizations and individuals.

The firm's attorneys conduct their practice from a suite of offices located at 789 SW Federal Highway, Suite 101, Stuart, Florida and in Vero Beach at 1701 Highway A1A, Suite 220. The law firm serves a geographic area primarily covering Martin, St. Lucie, Indian River, and Palm Beach Counties.

Deborah L. Ross

Deborah L. Ross is a founding shareholder of Ross Earle Bonan & Ensor, P.A. She has been a member of The Florida Bar since 1993. Her primary area of practice is the representation of community associations and is board certified in Condominium and Planned Development Law. Ms. Ross regularly lectures on community association law and related topics to attorneys, licensed community association managers, community association groups, and the general public. She also serves on the board of directors of the Treasure Coast Community Association, an organization dedicated to providing information to community associations. Ms. Ross routinely participates in The Florida Bar's Real Property Division, Condominium and Planned Development Committee practice section in order to stay abreast of current trends. Ms. Ross' practice includes general corporate representation related to condominium and community associations with a special emphasis also placed on developer turnover issues, construction-related issues, land use, drainage, government permitting and enforcement issues related to associations. Her practice also includes litigation support in a variety of areas including statutory and regulatory issues. Ms. Ross, along with her partners, oversees the periodic publication of the REBLAW Review (a newsletter geared towards informing clients and interested parties about the latest developments in condominium and community association law). She enjoys sports (Go Gators!), the theater, and spending time with her family.

Educational Background: University of Florida College of Law, J.D. (with honors); University of Florida, B.A. (Criminology).

Professional Association/Activities: The Florida Bar, the United States District Court, Southern District of Florida; the Martin County Bar Association; the Indian River County Bar; the American Bar Association; the University of Florida Law Association for Women; the Treasure Coast Communities Association, Inc.; the Community Associations Institute; The Florida Bar's Real Property Division, Condominium and Planned Development Committee.

Civic Activities: American Inns of Court; Girl Scout leader with the Girl Scouts of America.

David B. Earle

David B. Earle is a founding shareholder of Ross Earle Bonan & Ensor, P.A. He has been a member of The Florida Bar since 1992 and is board certified in Condominium and Planned Development Law. His primary areas of practice are commercial and complex civil litigation, labor and employment law, probate-related litigation and general business and community association representation. He regularly appears in circuit and county courts located throughout the 19th Judicial Circuit and other parts of Florida. Mr. Earle also has been certified by the Florida Supreme Court as a Circuit Civil and County Mediator and is a Florida Supreme Court approved Arbitrator. Mr. Earle handles real estate transactions and is an authorized agent for Attorneys' Title Fund Services, LLC (the "Fund"). Mr. Earle is AV Preeminent Peer Review Rated by Martindale-Hubbell.* A resident of Martin County for more than fifty (50) years, Mr. Earle was formerly an award-winning news reporter who also served as the District Director for then U.S. Representative Tom Lewis during the 1980s prior to commencing the practice of law. He has served as Chairman of The Florida Bar's Grievance Committee (19-A), Chairman of the 19th Judicial Circuit's Nominating Commission, and on various not-for-profit boards of directors including the LEADERSHIP Alumni of Martin County, Inc. and the Visiting Nurse Association of Florida, Inc. He enjoys golfing and spending time with his wife, Ellen (a Stuart native), and their daughters, Katie and Elizabeth.

Educational Background: Nova University, J.D. (summa cum laude); University of Florida, B.S. Journalism.

Professional Association/Activities: The Florida Bar, the United States District Court for the Southern and the Middle Districts of Florida, the United States Court of Appeal for the Eleventh Circuit, the Supreme Court of the United States; the Martin County Bar Association; the Indian River County Bar Association; Justice Major B. Harding American Inns of Court.

Civic Activities: Stuart-Martin County Chamber of Commerce; LEADERSHIP Martin County Alumni; Republican Executive Committee of Martin County; University of Florida Gator Booster Club; St. Mary's Episcopal Church.

Elizabeth P. Bonan

Elizabeth P. Bonan is a founder and managing shareholder for Ross Earle Bonan & Ensor, P.A. She has been a member of The Florida Bar since 1983. With more than thirty-five (35) years of legal experience, Ms. Bonan's primary area of practice is the representation of community associations and is board certified in Condominium and Planned Development Law. A long-time resident of Palm City, Florida, Ms. Bonan served for a number of years as in-house counsel for Southern Realty Group, the developer of the Martin Downs community. In private practice, Ms. Bonan has continued to build upon her depth of knowledge and experience in areas including the drafting of community association documents, general corporate representation, governmental permitting, contracts and the application/enforcement of covenants and restrictions. She represents a diverse variety of condominiums, homeowners associations, and mobile home cooperatives throughout the Treasure Coast. She remains committed to her community; having served for three years as a member of the Board of Directors of Safespace, two years as a member of the Board of Directors of Caring Children Clothing Children (the 4C's), nine years as a girl scout leader with the Palm Glades Council, Girl Scouts of America and four years as a board member of OPUS Boosters at Martin County High School. She is an active member of Soroptimist International of Stuart (President 2011/2012). Ms. Bonan is currently serving on the Board of Directors and the Executive Committee of the Arts Foundation for Martin County, Inc. With her partners, Ms. Bonan oversees the periodic publication of the REBLAW Review (a newsletter geared towards informing clients and interested parties about the latest developments in condominium and community association law). She enjoys cooking, football (Go Noles!), and spending time with her children and grandchildren.

Educational Background: Stetson University, College of Law, J.D.; Florida State University, B.S. (Finance).

Professional Association/Activities: The Florida Bar; the Martin County Bar Association; the Indian River County Bar Association.

Jacob E. Ensor

Jacob E. Ensor is a shareholder with Ross Earle Bonan & Ensor, P.A. He has been a member of The Florida Bar since 2006 and is board certified in Condominium and Planned Development Law. Mr. Ensor's practice includes condominium and community association law, civil litigation, collections, landlord/tenant law and business law. Mr. Ensor, while a law student, served as an intern with the Florida Attorney General's Office. He enjoys pick-up basketball and traveling. Mr. Ensor is married to another local attorney, Lori Steger, Esquire, and is the father of four daughters. He and Lori welcomed their fourth daughter, Ella, in November 2016.

Educational Background: Florida State University College of Law, J.D. (with honors); The Ohio State University, B.S. (Finance).

Professional Association/Activities: Florida Super Lawyers; Rising Star for 2012 and 2013; The Florida Bar; the Martin County Bar Association; the Indian River County Bar Association; the United States District Court for the Southern District of Florida; American Inns of Court; Articles and Notes Editor, the Environmental and Land Use Journal, Florida State University College of Law; Articles Editor, Journal of Transnational Law and Policy, Florida State University College of Law.

John P. Carrigan

John P. Carrigan recently became a shareholder of the firm in January, 2017. He has been a member of the Florida Bar since 2009 and is board certified in Condominium and Planned Development Law. Mr. Carrigan's areas of practice include civil litigation, representation of condominium and community associations, trademarks, intellectual property protection, collections, bankruptcy law and foreclosure litigation. Mr. Carrigan previously served as a law clerk working in the areas of consumer bankruptcy, intellectual property, and general litigation. He enjoys golfing, swimming and spending his time with his wife Alexandra and his children Theo and Mila.

Education Background: University of Dayton School of Law, J.D.; Miami University, B.A. (Political Science).

Professional Association/Activities: The Florida Bar; the Martin County Bar Association; the Indian River County Bar Association; The United States District Court for the Southern District of Florida; the United States District Court for the Middle District of Florida; The United States Bankruptcy Court for the Southern District of Florida; Justice Major B. Harding American Inns of Court.

Gary E. Simmons, Jr.

Gary E. Simmons, Jr. is an associate attorney and was admitted to the Florida Bar in March 2018. He is a 5th generation Floridian, Stuart native, and proud member of OPUS at Martin County High School. His father and namesake managed thousands of acres of citrus groves for Minute Maid and Becker Groves, while his mother, Beth, was a founding member of the Visiting Nurse Association. Mr. Simmons earned his B.A. in History with a Minor in Secondary Education from the University of Florida in 2006, and earned his Masters in Education in 2008. After teaching in public, private, and charter schools all over Florida, Mr. Simmons decided to pursue a career in the legal field. He graduated with his J.D. from Florida State University in 2017 and worked as a Public Defender in Orlando, before opening his own firm. Mr. Simmons returned to Stuart to be closer to his family and joined Ross Earle Bonan & Ensor, P.A. in 2022.

Mr. Simmons practices in the areas of Community Association Law, and Litigation support. He enjoys spending time with his fiancée, his nephews, and working on DIY/Repurposing projects while listening to audiobooks.

Education Background: Florida State University College of Law, J.D.; University of Florida College of Education, M.Ed; University of Florida, B.A (History).

Kate E. Bradford

Kate E. Bradford is an associate attorney who has been a member of the Florida Bar since 2006. Ms. Bradford graduated with honors with a B.A. from Miami University of Ohio in Political Science and Women’s Studies. After completing law school at Stetson University College of Law in Gulfport, Ms. Bradford began her career at the Office of the Public Defender and practiced criminal defense on both the west and east coasts of Florida. After moving to Martin County and settling in Palm City, Kate transitioned into education and was an Associate Professor at Indian River State College teaching in the Criminal Justice department. Ms. Bradford has held positions with the Junior League of Martin County, Pace Center for Girls, Martin County Florida Association for Women Lawyers, and founded the St. Lucie Chapter of the Florida Association for Women Lawyers. Ms. Bradford joined Ross Earle Bonan Ensor & Carrigan, P.A. in 2023 and practices in the areas of Community Association law and litigation support. In her free time, Ms. Bradford can be found spending time with her kids, Ruby, Olivia, Beau, and Lucy, and her husband, David, a financial advisor with Edward Jones.

Education Background: Stetson University College of Law, J.D.; Miami University, B.A. (Political Science and Women’s Studies)

Professional Associations/Activities: The Florida Bar, Martin County Bar Association, Indian River County Bar Association, and the Martin County Chapter of the Florida Association for Women Lawyers

Kurt McDavid

Kurt McDavid is an associate attorney with Ross Earle Bonan Ensor & Carrigan, P.A. He has been a member of The Florida Bar since 2020. After graduating law school in 2019, Kurt moved from his hometown in Orlando to the Treasure Coast to work as a Public Defender where he presided over 3,000 cases and 12 jury trials. His primary area of practice is Community Association Law and Civil Litigation support. He lives in Port St. Lucie with his wife Kara, and Maltipoo, Louie.

Educational Background: Florida Agricultural & Mechanical University, College of Law J.D. 2019, University of Central Florida, B.S. in Legal Studies 2015.

Professional Association/Activities: The Florida Bar; the Martin County Bar Association; the Indian River County Bar Association.

ROSS EARLE BONAN ENSOR & CARRIGAN, P.A.
Collection Procedures

The following is an outline of collection procedures for our office. Keep in mind that our office recommends that each Association adopt a collection procedure to follow addressing all possible alternatives in the collections stage (i.e., when a file will be turned over to our office, whether and when interest and late fees will be posted or accounts accelerated). A standard collection procedure is important to insure that all owners are treated equally.

Please Note: Before, a delinquent account is referred to our office for collection, the Association must send a thirty (30) day late notice to the owner in accordance with Florida Statute. If you are using the services of a management company it should prepare this notice for you. If you are self-managed, we can provide you with a form letter for use.

Once a file is turned over to our office for collection, we recommend that the attorneys fees outlined below be immediately posted on the individuals account to avoid the possibility of giving out an incomplete figure.

Once a file is turned over to our office for collection, we ask that the owner and/or anyone contacting the Association in conjunction with that particular file be referred to our office. Once contacted by an owner, our office will inform them that we are available to them by phone for pay off purposes only. They will be instructed to place all other disputes, comments, concerns, payment plan proposals, etc. in writing. This avoids any miscommunications on the particular file. We have a designated contact in our office to assist owners who call. This person is a paralegal, thus avoiding any further attorney fees at that stage.

The owner is informed of our office procedures and that upon receipt of their written communication, it will be provided to the Board for review and consideration. The file must be placed on hold until the Board's review of the individual's concerns, comments or offers. Our office must then be notified, in writing, as to how the Board would like to proceed and the owner is then in turn notified, in writing, by our office, of the Board's position.

Should the Association receive a partial payment on an account once it is turned over to our office for collections, by law, in most cases it must be accepted. Partial payments can be accepted in the delinquency notice/lien stages without jeopardizing the Association's position. However, it is imperative that our collections department is notified immediately when a partial payment is received so that our accounting remains accurate.

Collection Request Forms

Attached is a form required by our office for the processing of collection accounts. It should give us enough information to handle the account without having to come back to you for additional information. Please remember that we will be relying on any information that you provide us. In other words, if you fail to tell us about a charge or assessment, we will not be able to collect it.

You should always have some sort of system whereby you “flag” any account that has been turned over to our office for collection proceedings.

If there is a “dispute” associated with the file being turned over to our office, and the Association has received written communications regarding same, please be certain to attach\provide the prior correspondence to this form.

The \$175.00 attorney fee should be posted to the individual owner’s account at the time the request form is submitted to our office.

Billings are no longer sent to a delinquent owner once an account has been turned over to our office for collection proceedings, the attached forms are recommended (with the actual billing being sent to the attention of our Collection Assistant).

Any time there is a change in account status (accrual of new assessment(s), interest, late fee(s) or receipt of a partial payment), an Association must fax an adjusted statement to the attention of our Collections Department at (772) 287-8045 immediately. This will ensure that our figures and yours coincide at all times. If a partial payment is accepted, as outlined above, an adjusted statement must be immediately provided by fax to our Collection Assistant.

Delinquency Notice \ Flat Rate of \$175, including costs. Pursuant to both Chapter 718, Florida Statutes (condominiums) and Chapter 720, Florida Statutes (homeowners associations), a delinquency notice meeting specific statutory requirements must be sent to a delinquent owner before a lien can be recorded against an owner’s property. The cost of a delinquency notice is \$175.00. This expense is incurred upon our preparation of the delinquency notice. Upon receipt of a Collection Request Form, our office will send a delinquency notice, return receipt requested, to the owner giving the individual 35 (condominiums) or 45 (homeowners associations) days to bring the account current in order to avoid a lien being recorded against the property. Upon expiration, if the automatic lien process had been authorized, the next step, as outlined below, will be instituted. If the automatic lien process has not been authorized, our office will send you notice informing you of the account status and informing you that no further action will be taken on the account absent written lien authorization. Please note that it will take approximately 10-14 business days for a delinquency notice to be sent after our receipt of all required information. Remember, a delinquency notice must be sent before the property can be liened.

Please note: Although the \$175.00 delinquency notice fee is incurred upon our preparation of the notice, the charge will not show up on the Association's bill until 1 of 3 things occurs:

- (1) The delinquent owner pays off his account – including the \$175.00 fee. At that time we will post the charge to your association's invoice and it will be reflected on your next monthly bill; or
- (2) The Association decides to abandon collection efforts (i.e. not proceed with a lien even though full payment has not been received – including accepting payment which does not include the attorney's fee). If the Association decides not to proceed with collection of the debt, then the delinquency notice fee will be posted to the association's next monthly bill for payment; or
- (3) The Unit owner files bankruptcy or the property becomes the subject of a bank foreclosure. The delinquency notice fee will be posted to the association's next monthly bill.

Lien Process \ Flat Rate \$475, including copying, postage, and recording costs.

This expense is incurred upon our preparation of the lien. Should a lien request be submitted and canceled prior to our preparation of the lien, \$50 of the above flat rate, will be billed to the Association in order to cover the title work expense (this expense, if incurred before payment was received by the association, can be levied against the individual owner's account by the Association).

After the time for payment set forth in a delinquency notice expires and a lien is authorized either through the auto lien option or written directive, the initial step is to order title work on the property to confirm the correct owner of the property. The second step will be to obtain an updated statement for the unit from the association. Upon receipt of the last deed of record and an updated ledger (statement), the lien is prepared and sent to the Board for signature. Our transmittal to the Board requests that the executed lien, which contains the original blue ink signature, be returned to our office for recordation. A faxed signature cannot be recorded.

Upon receipt of the executed lien the lien is sent for recording. Upon recordation the owner is sent written notice of the fact that the lien has been recorded against the property and the notice provides the individual 35 days (condominiums) or 45 days (homeowner associations) to satisfy the account balance, inclusive of the attorneys fees incurred to date.

Should the account be satisfied, the lien fee includes the preparation and recording of a satisfaction of claim of lien.

Should the account not be satisfied, upon expiration of the time for payment set forth in a notice to the owner, our office will send notice to the Board outlining the available options to

the Board at that time. The options are basically (1) Do nothing. A lien is a cloud on the title to the property and the property cannot be sold unless the lien is paid. We will remind you before the lien expires (condominium association liens are valid for one (1) year from the date of recording; owners association liens (i.e. Hoa's, Poa's) are valid for five (5) years from the date of recording); (2) If the amount due is over \$1,000.00 and there is no bank foreclosure pending, it is recommended that the Board of Directors consider a foreclosure action; (3) If the amount due is under \$1,000.00, or if the property is in foreclosure, we usually recommend that the Board of Directors consider a small claims suit depending upon the other encumbrances on the unit. Should a written response not be received from the Board, our office will calendar the expiration of the claim of lien and institute Option 1 outlined above. At that time the delinquency and lien fees will be posted to the association's monthly bill.

Please note: Although the \$475.00 lien fee is incurred upon our preparation of the lien, the charge will not show up on the association's bill until 1 of 3 things occurs:

- (1) The delinquent owner pays off his account – including the \$475.00 (and the \$175.00 delinquency notice fee). At this time we will post the charge to your association's invoice and it will be reflected on the association's next monthly bill.
- (2) The association decides to abandon immediate collection efforts (i.e. not proceed with legal action even though full payment has not been received; accepting payment which does not include the attorney's fee; or determining to let the lien "sit" as a cloud on the property without taking affirmative action to collect the debt through small claims or foreclosure proceedings). If the association decides not to proceed with collection of the debt then the delinquency fee and the lien fee will be posted to the association's invoice for payment.
- (3) The Unit owner files bankruptcy or the property becomes the subject of a bank foreclosure. The delinquency and lien fees will be posted to the association's next monthly bill.

Foreclosure Action \ Billed Hourly

This is a lawsuit in county or circuit court. If the lien amount plus all attorney's fees are not paid, a judicial sale of the property could result. The progress of a case would depend on the response of the owner and the amount of any mortgage. The first step would be to order and review a foreclosure report (an approximate cost of \$200) and at that time we could provide a more detailed analysis of the encumbrances on the unit and the likely progress of the case. A resolution of the Board of Directors is required to start a lawsuit and we require that our office receive a copy of the resolution or minutes of the meeting at which such resolution is adopted.

Small Claims Action \ Billed Hourly

Small claims actions proceed much quicker than foreclosure suits and the end result can be the same, i.e., a sale of the property. However, a small claims judgment may be difficult

to collect upon. Title work, however, is not ordered with a small claims action. Written authorization informing our office of the Board's decision is required.

Note \ In both a foreclosure action and/or small claims action, it is very important that our office be notified prior to accepting any type of payment on the account.

Accounting Procedures

Application of Payments \ In any instance when a payment is received by a condominium or a homeowners association, pursuant to Sections 718.116 and 720.3085, Florida Statutes, it is to be applied in the following manner: (1) any interest accrued on amounts due the Association; (2) then to any administrative late fee; (3) then to any costs and reasonable attorneys fees incurred in collection; and (4) then to the delinquent assessment.

Payment Histories \ In any instance where a condominium or home owner makes a written request for history of their account, pursuant to Sections 718.116 and 720.3085, Florida Statutes, an account history and certificate must be provided to the individual owner within fifteen days of receipt of their request. Therefore, it is imperative that our office, upon request, immediately be provided with the backup\history for the particular account from the Association\Management.

Updated: 2-24-2022

DATE _____

**COLLECTION REQUEST
ROSS EARLE BONAN ENSOR & CARRIGAN, PA**

ASSOCIATION: _____

OWNER(S) NAME(S) _____

PROPERTY ADDRESS _____

UNIT\LOT: _____

BILLING ADDRESS _____

(If Different Than Above)

1. ACCOUNT CURRENTLY DELINQUENT IN THE AMOUNT OF \$ _____ (Back Up Ledger\Statement Attached)

****Please post the \$175.00 legal fee to the account prior to submitting to our office
Please provide copies of the thirty (30) day late notice sent to the owner(s)

2. PLEASE TELL US HOW ASSESSMENTS ARE LEVIED
MONTHLY ___ QUARTERLY ___ SEMI-ANNUAL ___ ANNUAL ___

PLEASE TELL US IN WHAT AMOUNT ASSESSMENTS ARE LEVIED
\$ _____

3. DOES THE ASSOCIATION CHARGE INTEREST
YES or NO \ RATE _____%

ON WHAT DATE DOES THE INTEREST ACCRUE _____

4. DOES YOUR ASSOCIATION CHARGE A LATE FEE
YES or NO \ RATE \$ _____

ON WHAT DATE DOES THE LATE FEE ACCRUE _____

IS THERE ANY FINE(S) PENDING?
YES or NO \ AMOUNT \$ _____ \ TYPE _____

****Please provide copies of ALL violation letters sent to the owner(s)**

5. IS THERE ANY SPECIAL CHARGE(S) PENDING (ie: Bulk Cable, Lot Mowing, etc.)
YES or NO \ AMOUNT \$ _____ \ TYPE _____

HOW ARE SPECIAL CHARGES LEVIED
MONTHLY ___ QUARTERLY ___ SEMI-ANNUAL ___ ANNUAL ___

**COLLECTION REQUEST
ROSS EARLE BONAN ENSOR & CARRIGAN, PA
(Continued)**

6. IS THERE ANY SPECIAL ASSESSMENT(S) PENDING AND/OR LEVIED
YES or NO \ AMOUNT \$ _____ TYPE _____

IF YES, LEVIED AS OF WHAT DATE _____
ARE FUTURE INSTALLMENTS REQUIRED _____

7. IS THERE ANY SPECIAL ASSESSMENT(S) ANTICIPATED
YES or NO \ AMOUNT \$ _____ TYPE _____

IF YES, WHEN WILL IT BE LEVIED _____
ONE-TIME PAYMENT VERSUS INSTALLMENT PAYMENTS _____

8. IF ASSOCIATION DOCUMENTS ALLOW, DOES THE ASSOCIATION WANT
TO ACCELERATE ON THIS DELINQUENT ACCOUNT? (***Accelerate means to "call due" all
assessments or assessment installments for the rest of the fiscal year.***)
YES or NO

9. IS THE ASSOCIATION'S FISCAL YEAR A CALENDAR YEAR
YES or NO \ IF NO, PLEASE SPECIFY _____

10. IS ASSOCIATION COA ___ or POA ___ or HOA ___

COLLECTION ACTION REQUESTED:

_____ DELINQUENCY NOTICE (\$175.00 WITH AUTOMATIC LIEN (\$475.00) PROCEEDINGS
UPON EXPIRATION, IF ACCOUNT BALANCE IS NOT PAID IN FULL.

_____ DELINQUENCY NOTICE (\$175.00)

SIGNED: _____

QUESTIONS CAN BE DIRECTED TO TELEPHONE # _____

Updated: 02-24-2022



ROSS EARLE BONAN & ENSOR, P.A.

The firm is pleased to announce that:

Deborah L. Ross, Esquire
David B. Earle, Esquire
Elizabeth P. Bonan, Esquire
Jacob E. Ensor, Esquire
John P. Carrigan, Esquire

Have become:

**Board Certified in Condominium
and Planned Land Development Law**

This is a brand new certification area established by the Florida Bar in 2018 and is reserved for attorneys who specialize in community association law and have met the qualifications for such distinction. Only 190 attorneys who are licensed to practice in the State of Florida have obtained this certification.



ROSS EARLE BONAN ENSOR & CARRIGAN, P.A.

VOLUME 19 AUGUST 2023

REB LAW REVIEW

ROSS EARLE BONAN ENSOR & CARRIGAN, P.A. NEWS

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Greetings to all of our clients, friends, and colleagues. This year has been another busy year for all of our community associations, with many engaging in roof and concrete restoration projects both to meet the new structural integrity requirements imposed upon residential condominiums that are three (3) stories or higher and to qualify for insurance coverage in a tight and expensive insurance market. We continue to monitor these economic conditions and remain available to all our clients for guidance on the potential impacts to community associations.

In other news, at the beginning of 2023 we welcomed two new associates, Kate Bradford and Kurt McDavid to our firm. Mrs. Bradford is an associate attorney who has been a member of the Florida Bar since 2006. Mrs. Bradford began her career at the Office of the Public Defender and practiced criminal defense on both the west and east coasts of Florida. In her free time, Mrs. Bradford can be found spending time with her kids, Ruby, Olivia, Beau, and Lucy, and her husband, David. Kurt McDavid has been a member of The Florida Bar since 2020. After graduating law school in 2019, Kurt moved from his hometown in Orlando to the Treasure Coast to work as a Public Defender. He joined the firm in March and currently practices community association law and civil litigation support.

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The Florida Legislature was busy this year. Below is a summary of the new laws impacting community associations:

HB 437 - *Property Owners' Right to Install, Display, and Store Items* (Chapter 2023-64, *Laws of Florida*). This bill amends both the Condominium Act (Chapter 718, Florida Statutes, and the Homeowners Association Act (Chapter 720, Florida Statutes) as follows:

§718.113, F.S., is amended to add **Patriot Day** as a day when a unit owner may display armed forces flags.

§720.304, F.S., is amended to expand the types of flags that homeowners may display to include First Responder Flags and afford homeowners the right to display up to **two (2)** of the statutorily permitted flags. Section §720.3075 is amended to provide that homeowners association documents may not include provisions that preclude such displays but all flags must be displayed in a respectful way per U.S. Code.

A new §720.3045, F.S., which prohibits a homeowners association from restricting parcel owners or their tenants from installing, displaying, or storing any items which are not visible from the parcel's frontage or an adjacent parcel, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements. Such items include, but are not limited to, artificial turf, boats, flags, and recreational vehicles. This new statute is significant and requires homeowner associations to evaluate issues such as the definition of a “parcel”, the definition of “visible”, and whether the law is applicable to its community based upon the language of the homeowner association’s underlying covenants as to the incorporation of amendment to Chapter 720, Florida Statutes into same.

The law is effective as of July 1, 2023.

HB 799 - *Property Insurance* (Chapter 2023-175, *Laws of Florida*)

As it relates to community associations, this law amends Chapter 627, Florida Statutes, to add additional discounts for wind mitigation, and significantly provides that for residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage.

Prior to issuing a policy containing wind coverage, but after verifying that the insured or applicant has flood coverage, the insurer must obtain a written acknowledgment from the insured or applicant that he or she understands that the policy containing wind coverage requires that the insured or applicant maintain flood coverage.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

HB 919 - Homeowners Associations "Homeowners' Associations Bill of Rights." (Chapter 2023-228, Laws of Florida)

This Bill amends the Homeowners Association Act as follows:

§720.303(2): *Board Meeting Notices.* Notices of all HOA Board meetings **must now specifically identify all agenda items for the meetings.** **This is a major change.**

§720.303(4): *Official Records.* HOA official records must include designated mailing addresses for all members (which is the parcel address unless the owner designates otherwise in writing).

§720.303(8)(d): *Commingling.* This is a new provision that provides that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, **such funds must not be comingled with any other HOA funds.** The member may request an accounting of such funds. The association has seven days to provide the accounting. The association must remit payment of unused funds within 30 days of the completion of the project.

§720.3033(3): *Crimes and Kickbacks:* **This new provision creates criminal penalties for soliciting, offers to accept, or accepting "kickbacks."** If the kickback amount is less than \$1,000 the crime is a misdemeanor of the first degree. If the kickback amount is over \$1,000 the crime is a felony of the third degree. Any officer or director who solicits, offers to accept, or accepts any such kickback could be personally liable for monetary damages under Florida Statute 617.0834 (Officers and Directors of certain corporations and associations not for profit; immune from civil liability).

§720.3033(4): *Crimes.* Association officers and directors charged with enumerated crimes of dishonesty i.e., fraud, theft, embezzlement, etc., related to the association, must immediately be removed from office. Any person with any such charges pending may not be appointed or elected to any position within the HOA.

§720.3033(6): *Conflicts of Interest* this is a new provision which provides that directors and officers who are appointed by a developer must disclose their relationship with the developer to the association each year. This disclosure must include any activities that may reasonably be construed as a conflict of interest. There is a rebuttable presumption that a conflict of interest exists where: (1) a director or officer or relative of director appointed by a developer enters into a contract for goods and services with the association; (2) a director or officer appointed by a developer holds an interest in a business entity that conducts business with the association.

§720.305(2): *Fines and Suspensions.* **This statutory amendment clarifies that before a fine or suspension levied by the Board may be imposed, the parcel owner must first be provided with a notice of hearing which must be sent to the unit owner at least fourteen days before the hearing, and such notice must include a description of the alleged violation, the specific**

action required to cure the violation, and the date and location of the hearing. The owner has the right to attend the hearing by telephone or other electronic means. After any such hearing, the hearing committee must provide notice to the unit owner (and any other occupant, etc., if applicable), of the committee's findings regarding the violation, including any applicable fines or suspensions that the committee approved or rejected (approval of a fine or suspension must be by majority vote), and how the parcel owner may cure the violation

§720.3065: Election Fraud. This is a new provision which provides that it is a criminal misdemeanor to engage in fraudulent voting activities, which include:

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly, or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

The law is effective as of October 1, 2023.

HB 1185 - Consumer Protection (Chapter 2023-130, Laws of Florida) Effective July 1, 2023.

§627.714: Loss Assessment Statute of Limitations: This bill creates a three-year timeframe for providing notice of a condominium or homeowners' association related loss assessment claim to an insurer. Prior to July 1, 2023, no specific time limit applied for loss assessment claims. Loss assessments are a unit owners share of a fee to cover a loss for a community association if the association does not have sufficient insurance to cover all the damage from an insurance claim or if the association's deductible is higher than the cost of the damage.

SB 154 - Condominium and Cooperative Associations (Chapter 2023-203, Laws of Florida)

Multiple changes were made to the statute (§553.899) governing milestone inspections and structural integrity reserve studies. The following is a summary of pertinent changes:

Milestone Inspections

1. The statute was amended to clarify which condominium and cooperative associations must complete milestone inspections. The statute now states that a building that is 3 stories or more in height, as determined by the Florida Building Code, and that is subject, in whole or in part, to the condominium or cooperative form of ownership as residential housing must have a milestone inspection performed 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.
2. The Statute was amended to clarify the deadline for completing milestone inspections for buildings reaching 30 years of age before July 1, 2022, and buildings reaching 30 years of age on or after July 1, 2022, and before December 31, 2024. The statute now provides:
 - a. If a building reached 30 years of age before July 1, 2022, the initial milestone inspection must be performed before December 31, 2024.
 - b. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the milestone inspection must be performed before December 31, 2025.
3. The Statute previously stated that a building located within 3 miles of a coastline must have a milestone inspection by December 31 of the year in which the building reaches 25 years of age. This was removed, and the statute now states that a local enforcement agency may determine that local circumstances, including conditions such as proximity to salt water require a milestone inspection within the 25-year period referenced above.
4. The Statute was amended to provide that a local governing agency may extend the deadline for completing an initial milestone inspection if the owner shows good cause and the owner has entered into a contract with an architect or engineer to perform the milestone inspection and the inspection cannot be reasonably be completed before the deadline or other circumstances to justify an extension.
5. The Statute was amended to provide that if the date of issuance of the building's certificate of occupancy is not available to determine when the milestone inspection must be performed, the date of issuance of the certificate of occupancy is the date of occupancy evidenced in any records of the local building official.
6. The Statute was amended to provide to allow local enforcement agencies to accept an inspection report prepared before July 1, 2022. The statute states that an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially comply with the statute. The association must still comply with the unit owner notice requirements of the statute.

7. The Statute was amended to provide that milestone inspections may now be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.
8. The Statute was amended to provide that local enforcement agencies must provide written notice to an association that a milestone inspection is required. The statute now requires the association to notify all unit owners within 14 days after receiving the written notice and provide the date that the milestone inspection must be completed. The notice may be given by electronic submission to unit owners who consent to receive notice by electronic submission or by posting on the association's website.
9. The statute was amended to allow an association to use a milestone inspection or inspection completed for similar local requirements as the visual inspection portion of the structural reserve study if it was performed within the past 5 years.
10. The statute was amended to require the association to send a copy of inspector prepared summary of the inspection report to each unit owner within 45 days after receiving the applicable inspection report.
11. The statute was amended to require the engineer or architect to provide a progress report to the local government agency within 180 days if a phase two inspection is required.

§718.111(12): Access to Records. Any person authorized by any association member and the member, has the right to inspect the official records of the association.

§718.112(2)(e)(2)(b) Determination of Assessments. Any determination of whether assessments exceed 115 percent of assessment for the prior fiscal year, now excludes insurance premiums.

§718.112(2)(f)(2) Reserves. In condominiums that are required to have a structural integrity reserve study, the budget **must** include reserves for the items set forth in §718.112(2)(g), Florida Statutes. **They may not be waived.**

However, condominiums that are required to have a structural integrity reserve study may waive reserves, less than fully fund reserves or approve the use of reserves for a purpose other than for which they were originally reserved, for items other than those required by §718.112(2)(g), Florida Statutes, upon the approval of a majority of the **total voting interests.**

Similarly, **even** condominiums that are **not** required to have a structural integrity reserve study (i.e., those that are less than three (3) stories), now must obtain **the approval of a majority of all voting interests (instead of a majority of those voting interests present at a meeting),** in order to waive reserves, less than fully fund reserves, or to use reserves for a purpose other than for which they were originally reserved. **This is a major change.**

Reserves and Structural Integrity Reserve Study (“SIRS”)

The bill amends §718.112(2)(f) for condominiums and §719.106(1)(j) for cooperatives addressing Reserve Funding generally to:

- Distinguish the reserve accounting requirements for associations that are subject to the SIRS requirements (i.e. three stories or more) and those associations that are not subject to SIRS requirements (i.e. under three stories) by:
 - Limiting the prohibition against the waiving of reserves and the use of reserves for other purposes to the associations that must perform the SIRS; and
 - Permitting unit owners that are not required to have a SIRS, to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose, if approved by a majority vote of all voting interests.
- Require associations that are subject to the 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 report.
- Permitting multi-condominium associations to waive reserves if an “alternative funding method” has been approved by the DBPR.
- Provides that reserve assessments may be adjusted for inflation.
- Prohibits the uses of reserve funds for the SIRS items for other purposes other than the “replacement or deferred maintenance costs of the SIRS components” instead of “their intended purposes.”

The bill amends §718.112(2)(g) for condominiums and §719.106(1)(j) for cooperatives addressing SIRS requirement to:

- Limit the SIRS requirement to only residential (or mixed-use) condominiums and cooperatives.
- Clarifies that the three-story building threshold for a SIRS report is determined by specifications within the Florida Building Code as what constitutes a “story”.
- Clarifies that the SIRS recommendation must include a reserve funding schedule.
- Removes the term “Floor” from the list of building components that must be visually inspected in for SIRS report.
- Permits the visual inspection portion of the SIRS report to be verified by either:
 - A licensed engineer or architect; **or**
 - A Reserve Specialist, or Professional Reserve Analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.
- Clarifies that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined.
- Requires reserves for deferred maintenance for the amount recommended by the SIRS, including for items for which there is no ascertainable estimate of useful life.
- Clarifies that the following are exempt from the SIRS requirement:
 - Buildings less than three stories in height;
 - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; or

- Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association – such as in a mixed-use condominium, or windows if windows are maintained by the unit owners.

Associations not subject to SIRS studies and associations that are subject to SIRS study that want to waive reserve for non-SIRS items, still can but requires vote of majority of ALL voting interests – not just a majority of those present at the meeting. This applies to waiver of reserves OR use for reserves for a purpose other than for which they were intended.

§718.1255: *Dispute Resolution*. Effective July 1, 2027, the definition of a “dispute” that must be mediated before it can be litigated, will include actions against a board of an association for its failure to obtain milestone inspections, structural integrity reserve studies, fund reserves for integrity reserve items; and to make or provide necessary maintenance or repairs recommended by a milestone inspection or structural reserve study.

§718.113: *Maintenance Obligations of the Association*. The maintenance of common elements are the obligation of condominium associations except for any maintenance responsibility for limited common elements that is assigned to the unit owner by the declaration. After turnover, the association is responsible for any maintenance identified by the developer in the turnover report until the association develops new maintenance protocols from an authorized professional. Mirroring provisions are created under Florida Statute Ch. 719 for cooperative associations.

§718.112(2)(k) (8): *Officer Fiduciary Duty*. A duty is imposed on the officers and directors of an association to complete a structural integrity reserve study. A knowing and willful failure to have a structural integrity reserve study completed is a breach of an officer’s or director’s fiduciary duty to the unit owners.

§718.503: *Presale Disclosures*. Provides protections for prospective purchasers of units under §718.503 and §719.503, for condominium and cooperative associations respectively, against unit owners and developers. Unit owners selling their property are required to furnish milestone inspection reports, structural integrity reserve studies, or notice that such reports have not yet been completed, within fifteen days prior to the execution of the land sale contract. The land sale contract is voidable up to 15 days after execution upon written notice if the buyer has not been provided with a current copy of the SIRS or the inspector-prepared summary. A mirror requirement is required of developers to prospective purchasers in any similar land sale contract.

SB 360 - *Causes of Action Based on Improvements to Real Property* (Chapter 2023-22, Laws of Florida)

§95.11(3): This provision has been amended to provide that the four (4) year statute of limitations for an action founded on the design, planning or construction of an improvement to real property starts to run at the **earliest** date the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion, or the date of abandonment of construction if not completed.

It also reduces the period for filing a latent construction defect claim from ten (10) years to seven (7) years from the **earliest** of date the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion, or the date of abandonment of construction if not completed. and creates further restrictions on other construction defect claims.

The amendments to §95.11(3)(c), Florida Statutes, made by this act apply to any action commenced on or after the effective date of this act, regardless of when the cause of action accrued, except that any action that would not have been barred under §95.11(3)(c), Florida Statutes, before the amendments made by this act must be commenced on or before July 1, 2024. If the action is not commenced by July 1, 2024, and is barred by the amendments to § 95.11 (3)(c), Florida Statutes, made by this act, then the action is barred.

HB 949 - *Operation of a Golf Cart* (Chapter 2023-67, *Laws of Florida*)

§316.212: *Operation of Golf Carts.* This provision has been amended to change the requirements for the operation of golf carts on **public** roads and streets. This bill changes the law from permitting a golf cart operator to be someone who is at least age 14 to now requiring that golf carts be operated on **public** roads and streets only by those who are either 18 years of age or older with a valid government form of ID (notably a driver's license is not required) or by someone who is under 18 years of age and possesses a valid learner's driver's license or driver's license. Golf carts may only be driven on public roads or roads maintained by water control districts that have been designated for golf cart use.