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## LEGAL UPDATE: DEADLINES FOR ADOPTING CONDOMINIUM BUDGETS ARE FAST APPROACHING

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Effective July 1, 2021, Florida condominium law now requires that the annual budget for condominium associations be proposed to unit owners and adopted at least 14 days before the beginning of the fiscal year. Most condominium associations use the calendar year, and their fiscal year begins on January 1st and ends on December 31st of each year. As such, the deadline for most condominiums operating on the calendar year is **December 18th**, which falls on a Saturday this year.

In addition, the condominium law requires that notice of any meeting at which the budget will be considered, along with a copy of the proposed budget, must be sent at least 14 days in advance of the meeting. As such, for a meeting held on December 18th, the latest deadline for sending notice would be **December 4th**. However, some association bylaws may require a longer notice period, moving the deadline earlier, so it is advisable to review the association's bylaws now to confirm the notice period requirement.

Keep in mind that Section 718.112(2)(f), Florida Statutes, and Rule 61B-22.005 of the Florida Administrative Code, specifically require that all condominium budgets include fully funded statutory reserves, which includes reserve accounts for roofing replacement, painting, paving, and any other project that has an anticipated cost of greater than \$10,000.00. As such, each year the Board has an obligation to propose and fund a budget with fully funded reserves – even if it anticipates that a majority of the voting interests will vote in favor of waiving or reducing reserves.

In light of the collapse of the Champlain Towers South Condominium in Surfside, Florida, we expect that budgets and reserves will be a focus and priority for State regulators (i.e. the Division of Florida Condominiums, Timeshares, and Mobile Homes, with the Department of Business and Professional Regulation), as well as concerned unit owners. The failure to properly and timely prepare the budgets could precipitate complaints from unit owners, enforcement action by State regulators, and penalties levied against condominium associations.

If a condominium association fails to timely adopt the annual budget, the prior year's budget will continue in effect until a new budget is adopted. However, the failure to timely adopt the annual budget a second time is a minor violation. So condominium associations should not waste their first strike if it can be avoided.

Furthermore, failing to properly and timely adopt the annual budget may subject the condominium association to other violations and penalties. Rule 61-B-21.003 of the Florida Administrative Code governs the levying of costs and civil penalties. The minimum/maximum for minor violations is \$500.00/\$2,500.00 per violation, and the minimum/maximum for major violations is \$500/\$5,000.00 per violation.

The Penalty Guidelines in Rules 61B-21.002 and 61B-21.003, Florida Administrative Code, list the following as violations related to budgets and reserves:

**Minor Violations (\$500-\$2,500 per violation)**

<b>Category</b>	<b>Statute (F.S.) or Rule (F.A.C.)</b>	<b>Description of Conduct/Violation</b>
Budgets	61B-22.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in the proposed budget.

**Major Violations (\$500-\$5,000 per violation)**

<b>Category</b>	<b>Statute (F.S.) or Rule (F.A.C.)</b>	<b>Description of Conduct/Violation</b>
Budgets	718.112(2)(e), F.S.	Failure to propose/adopt budget for a given year.
Budgets	718.112(2)(f)1., F.S.	Failure to include a schedule of limited common element expenses in budget.
Budgets	61B-22.003(4)(a), F.A.C.	Failure to prepare a separate budget for each condominium operated by the association, as well as for the association.
Budgets	61B-22.003(1)(e),(f),(g), F.A.C.	Failure to include reserve schedule in the proposed budget. Failure to disclose converter-reserve funding.
Budgets	718.112(2)(f)2., F.S. 61B-22.005(3), (5), F.A.C.	Improper calculation of reserve requirements.
Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.
Reserves	718.112(2)(f)2., F.S. 61B-22.005(8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.
Reserves	718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C.	Using reserve funds for other purposes without proper unit owner approval.

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*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

Questions regarding the content of this article may be emailed to Christopher Pope at [chrispope@paveselaw.com](mailto:chrispope@paveselaw.com). To view past articles, please click “Publications” on our firm website. Mr. Pope is one of only two attorneys in Florida that is Florida Bar Board Certified in both Construction Law and Condominium and Planned Development Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243.

**Pavese Law** has five attorneys Board Certified in Condominium and Planned Development Law; three of only thirty attorneys in the State of Florida who are Board Certified in both Real Estate Law and Condominium and Planned Development Law; and one of only two attorneys in the State of Florida who is Board Certified in both Construction Law and Condominium and Planned Development Law.

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