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2024 LEGISLATIVE UPDATES MY SAFE FLORIDA CONDOMINIUM PILOT PROGRAM

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The My Safe Florida Condominium Pilot Program is a hurricane mitigation inspection and grant program intended for eligible condominiums in the State. The program is limited to condominiums within 15 miles from a coastline, and will offer hurricane mitigation inspections and match grants for certain improvements that bolster hurricane protection.

There are various threshold votes required to apply for inspections and/or grants under the program. Grants are available to associations only, and are for enhancements to roof(s) and the installation of hurricane safe windows, doors, and skylights, among other improvements. Grants intended for improvements to *units* within a structure will require the unanimous consent of all unit owners within that structure. Grants may be awarded at a rate of \$2 provided by the State for every \$1 provided by the association, subject to additional limitations described below and a cap of \$175,000.00 per association. Grants will not be awarded to individual unit owners.

As always, associations are encouraged to consult with legal counsel concerning the implications of applying for a hurricane mitigation inspection or a grant under the program. The inspections and applications will constitute official records of the association under Chapter 718, F.S. ***Keep in mind that the inspections may reveal damage that the association could then be required to repair or replace, regardless of whether a grant is applied for or awarded under the program.*** It is unclear whether, and to what extent, the board could limit its business judgment discretion if an inspection report makes certain recommendations that an association does not then proceed to carry out. Below you will find a more comprehensive overview of the program and its limitations.

My Safe Florida Condominium Pilot Program (General Overview) – Section 215.5587, F.S.

The My Safe Florida Condominium Pilot Program, administered by the Department of Financial Services (“DFS”), aims to enhance the safety of condominiums in Florida through inspections and potential retrofitting. The program is intended to provide access to inspections and grant funding for eligible condominiums in the State of Florida. However, the program doesn’t guarantee funding for inspections or retrofitting, and its continuation depends on yearly

legislative appropriations. The program intends to provide licensed inspectors for inspections and grants to eligible condominium associations, with funding availability determining the extent of these services.

Definitions – Section 215.5587(1), F.S.

The definitions Section clarifies key terms to be used in the program. It defines terms like “association,” “association property,” “condominium,” “condominium property,” “unit,” and “unit owner.” The delineation of “service area” as any area of the State that is 15 miles inward of a coastline, as that term is defined in Section 376.031, F.S., is crucial for determining program eligibility and scope. Only condominium associations with property in the service area (within 15 miles from a coastline) will be eligible for the program at this time.

Participation – Section 215.5587(2), F.S.

There are participation requirements for eligible condominiums, as follows:

1. In order to apply for the hurricane mitigation inspection or a grant for association property or condominium property, the association must have the approval of a majority of the board or a majority of the total voting interests. If the improvements will only be to condominium property or association property, then the unanimous vote of the owners in the condominium building is not required.
2. For grants to improve *units* within a condominium, additional requirements include approval for a mitigation inspection and a *unanimous* vote of all unit owners within the structure or building that is the subject of the mitigation grant. In other words, to apply for a grant in which condominium units will be improved (which would require an analysis of unit boundaries to determine whether components being improved are part of the unit), a majority vote of the board or the total voting interests, as well as a unanimous vote of all unit owners within the structure or building that is the subject of the mitigation is required. A minimum 14 days’ notice of a membership meeting must be provided with a clear disclosure of the pilot program that DFS will promulgate.
3. Unit owners cannot individually participate in the program but can benefit from mitigation grants awarded to their association.
4. Votes for participation can occur at annual budget meetings or special meetings called for that purpose, with clear disclosure provided to unit owners beforehand.
5. The president and treasurer of the board must sign the disclosure form which, along with meeting minutes, becomes part of the association’s official records.
6. Written notice of the decision to participate must be provided to all unit owners within 14 days after an affirmative vote in the same manner as Section 718.112(2)(d), F.S.

Hurricane Mitigation Inspectors – Section 215.5587(3), F.S.

Licensed inspectors play a crucial role in conducting property inspections to assess mitigation needs, potential insurance discounts, and necessary improvements to reduce vulnerability to hurricane damage. This highlights the program’s focus on proactive measures to enhance the safety and resilience of condominium properties in Florida.

DFS will oversee the contracting of wind certification entities for hurricane mitigation inspections. These entities must meet stringent criteria, including employing inspectors licensed or certified in various relevant fields, such as building inspection, contracting, engineering, architecture, or home inspection, with specific training in hurricane mitigation techniques. Moreover, inspectors must undergo drug testing, background screening, and fingerprinting, with associated fees borne by them. The inclusion of a quality assurance program with a re-inspection component underscores the importance of accuracy and reliability in the inspection process.

Hurricane Mitigation Inspections – Section 215.5587(4), F.S.

Inspections provided to associations under this Section 215.5587(4), F.S., must include a comprehensive assessment of the property, along with a report summarizing the findings and recommending mitigation improvements to reduce hurricane damage. Cost estimates for these recommended improvements and information on potential insurance premium discounts related to current mitigation features and recommended improvements must also be provided. Applications for inspections require a signed or electronically verified statement from the board president confirming that the association has submitted only one application per property that the association operates, ensuring accountability in the application process. Notably, associations have the option to apply for and receive inspections without simultaneously applying for grants under Subsection (5), providing flexibility in their approach to risk mitigation and funding.

Mitigation Grants – Section 215.5587(5), F.S.

The mitigation grant requirements are as follows:

1. Financial grants can be used by associations to implement improvements recommended in a hurricane mitigation inspection report to enhance the condominium's resistance to hurricane damage.
2. Application requirements for mitigation grants include a signed statement confirming single application submission per property, notarized statements from the board president regarding contractor selection and project completion commitment, and unit owner acknowledgments if the grant is for unit improvements.
3. Associations can select their contractors but must ensure they meet all necessary qualifications and hold valid licenses, with DFS verifying contractors' credentials electronically before approving grant applications.
4. Grant recipients must complete the entire mitigation project within a year of approval, ensuring compliance with Florida Building Code requirements, and make the property available for final inspection.
5. Eligible improvements covered by grants include opening protection (exterior doors, garage doors, windows and skylights), roof reinforcement, roof-deck attachment enhancement, and secondary water resistance for roofs.
6. Grant projects are funded on the basis of \$1 provided by the association for \$2 provided by the State, as a match grant, with specific contribution limits for roof projects, opening protection-related projects, and a maximum grant award *per association* of no more than \$175,000.00.
 - For roof related projects, the funding is \$11 per square foot multiplied by the square footage of the replacement roof (not to exceed \$1,000/unit). The maximum grant award is 50% of the cost of the project.
 - For opening protection-related projects, the grant contribution is a maximum of \$750 per replacement window or door, not to exceed \$1,500 per unit, with a maximum grant award of 50% of the cost of the project.

An association may receive grant funds for both roof related and opening protection related projects, but the maximum total grant award may not exceed \$175,000 per association.

Whether DFS will factor in the reality of multi-condominium associations when it comes to participation in the program and the cap of the grant award remains to be determined; however, the express language of the statute would seem to preclude such an interpretation. The cap is *per association*.

7. Grants can be used for existing structures on the property, and if prior improvements were made, new grant-funded improvements must meet or exceed the applicable building code in effect at the time the association applied for the grant, and most provide more hurricane protection than the improvements that the association previously installed. Further, the association cannot use mitigation grants to install the same type of improvements that were previously installed or for insurance deductibles.
8. DFS is tasked with developing an efficient process for collecting and verifying inspection and grant applications, utilizing inspectors or electronic means for data collection and eligibility determination.

Contract Management – Section 215.5587(6), F.S.

DFS is authorized to engage third-party contractors for essential services like grants management, inspections, contractor services, information technology, educational outreach, and auditing, with these contracts classified as direct costs of the program exempt from administrative cost limits. Providers must demonstrate a successful track record in relevant areas and uphold the highest standards of accountability for state fund usage. Additionally, DFS is required to establish a quality assurance and reinspection program to ensure that initial inspections and mitigation efforts align with the program’s goals. Random sampling may be utilized for quality assurance purposes, emphasizing the commitment to thorough oversight and adherence to program objectives.

Reports – Section 215.5587(7), F.S.

DFS is mandated to submit an annual report by February 1 each year to the President of the Senate and the Speaker of the House of Representatives, detailing the activities and State fund utilization of the pilot program. This report includes crucial information such as the number of inspections requested and performed, the number and value of grants approved, and the average annual insurance premium discounts received by participating associations and unit owners.

Requests for Information – Section 215.5587(8), F.S.

DFS has the authority to ask applicants for additional information if needed. If DFS doesn’t receive a response within 60 days of notifying the applicant about any errors or omissions, the application is considered withdrawn.

Rules – Section 215.5587(9), F.S.

DFS is required to adopt rules pursuant to Sections 120.536(1) and 120.54, F.S., to implement and oversee various aspects of the program. These rules will govern the overall program operation, hurricane mitigation inspections, grants, mitigation contractors, and the training of inspectors and contractors.

Conclusion

This update is intended to highlight changes to Florida law effective July 1, 2024, but should not be considered a substitute for reviewing the law itself. The Department of Financial Services will be developing the program beginning July 1, 2024. It is anticipated that applications will not be available for use until the Fall of 2024. We trust that this update has provided valuable information. Please stay tuned for further updates as we navigate the implementation of these legislative changes.

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 L. Pope at 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 Board Certified by the Florida Bar in the three areas of Construction Law, Condominium and Planned Development Law, and Real Estate 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.

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