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Sent Via Email (srose@lauderdalewest.org)

Stephen Rose, President
Lauderdale West Community Association No. 1, Inc.
1141 NW 85 Avenue
Plantation, FL 33322-4624

RE: Lauderdale West Community Association No. 1, Inc. (the "Association")
Our File No. 12933.000

Dear Mr. Rose,

You have asked me to review the interplay between your condominium association's bylaws (which limit annual reserve-fund contributions from being increased by more than 110% without a member vote) and the statutory requirement under Chapter 718, Florida Statutes that reserve accounts be established and funded for capital expenditures and deferred maintenance. Based on current Florida law as of this date, it is my opinion that the statute likely supersedes the bylaws to the extent the bylaws purport to limit or restrict the association from making the full required contributions to reserves under § 718.112(2)(f)(2)(a), Florida Statutes. I emphasize that the issue is not entirely settled under Florida law and there remains risk of challenge, so this opinion should not be construed as a guarantee of immunity from litigation or an adverse decision from such litigation.

Facts and Governing Provisions

Your association's bylaws in Section 6.2(c) provide a contractual limitation: reserve contributions may not be increased by more than 110% each year without a seventy-five percent vote of the members.

The statute in question is §718.112(2)(f)(2)(a), Florida Statutes, which provides that in the annual budget the association must include reserve accounts for capital expenditures and deferred maintenance (including roof replacement, painting, pavement resurfacing, or any item with a deferred maintenance cost or replacement cost exceeding $25,000), and that the amount to be reserved must be "computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item."

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The statute further clarifies that the association may adjust replacement reserve assessments annually to take into account inflation and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.

The Act also provides in subsection (2)(f)2 and elsewhere that unit-owners, by majority vote of the total voting interests, may determine to provide no reserves or less reserves than required in certain narrow circumstances (though recent amendments limit waivers or reductions of structural integrity reserve study items).

Your association's governing documents thus present a limitation on the board's ability to increase reserves beyond the 110% threshold without owner approval.

Legal Issues and Analysis

The fundamental question is whether the statutory mandate to fund reserves under § 718.112(2)(f)(2)(a) overrides the contractual limitation in your bylaws. That question involves several sub-issues:

(a) Does the statute apply to existing associations and governing documents?

(b) Is the bylaw limitation a "vested right" or contractual expectation protected from impairment by later statute under the Florida Constitution's Contract Clause?

(c) If the statute impairs contractual rights, is that impairment permissible under Florida precedents (i.e., was the statute enacted under the police power for a valid public purpose, and is the means reasonably related to that purpose)?

After briefly discussing the Contract Clause, I address issue each in turn.

Contract Clause

The Contract Clause is found in Article I, Section 10 of the US Constitution and in Article I, Section 10 of the Florida Constitution. It prohibits state legislatures from passing laws impairing a contractual obligation. Your declaration and governing documents are treated as a contract among the members. *Lassen v. Dolphin Tower Condominium Ass'n*, 415 So.3d 1216 (Fla. 2nd DCA 2025) (holding "[a] declaration of condominium is a contract between the unit owners and the association and is interpreted like any other contract"). Historically, the rational behind the Contract Clause was that before the adoption of the Constitution in 1789, many state legislatures passed private relief bills relieving particular persons of their obligation to pay their debts to others. This created great legal and economic uncertainty that could undermine the new republic's legitimacy unless such practice was curbed. See, e.g., James W. Ely, Jr., *The Contract Clause: A Constitutional History*, University Press of Kansas (2016).

(a) Applicability of the statute to existing governing documents

There is no specific language in § 718.112 that states unequivocally that the reserve-funding requirements may not apply to a condominium whose declaration or bylaws limit increases in reserves. The statute uses mandatory language ("the budget must include reserve accounts ... the amount to be reserved must be computed ...") which suggests it applies to all associations subject to Chapter 718.

If the condominium declaration or bylaws do not contain "*Kaufman* language" (i.e., a clause stating the declaration is governed by the Act "as amended from time to time"), then newly-enacted statutes may not automatically supersede the governing documents without potential challenge under the Contracts Clause. See, e.g., *Kaufman v. Shere*, 347 So.2d 627 (Fla. 3rd DCA 1977).

In that regard, courts have held that when governing documents incorporate future amendments, statutory changes apply seamlessly; absent that, the statute may only apply if the statute is remedial, procedural, or enacted under the police power and does not impair vested rights. *Avila v. Biscayne 21 Condominium*, ___ So.3d ___ (Fla. 3rd DCA 2025); *Tropicana Condominium Association v. Tropical Condominium*, 208 So.3d 755 (Fla. 3rd DCA 2016).

Because the Association's governing documents do not contain *Kaufman* language, then the statute's application may be challenged on Contracts Clause grounds.

(b) The bylaw limitation as a vested contractual right

Your bylaws create a limitation on the increase in reserves (110% cap without owner vote). That limitation arguably constitutes a contractual right of the unit-owners and the association. Under Florida law, unit-owner declarations and bylaws create enforceable contract (and property) rights. See *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

When an owner has a "vested right," a later statute may not impair it unless certain tests are met. In *Florida Insurance Guarantee Association v. Devon Neighborhood Association*, 67 So.3d 187 (Fla. 2011) the Florida Supreme Court set forth the test as follows:

1. is there is clear evidence of legislative intent to apply the statute retrospectively?
2. only if the legislation clearly expresses an intent that it must apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.

In the analysis of the second prong, the courts require:

1. The state regulation must substantially impair a contractual relationship;
2. The state must have a significant and legitimate purpose behind the regulation such as the remedy of a broad and general social or economic problem;
3. The law must be reasonable and appropriate for its intended purposes.

Thus, your bylaw limitation may be viewed as a vested contractual right which a later statute seeks to impair.

(c) Contracts Clause analysis / police power exception

Under Florida law, a statute that impairs a contract is not automatically unconstitutional; rather the court examines whether (i) the state has a significant or legitimate public purpose behind the statute, (ii) the statute's means are reasonable and appropriate (i.e., a good fit to the purpose), and (iii) the impairment is not excessive in relation to the statute's objectives. *Pomponio*, 378 So.2d at 780-81; *Florida Insurance Guarantee Association.*

Moreover, if the statute was enacted under the state's police power (i.e., to protect the health, safety or welfare of the public), then that strengthens the argument for its validity despite impairment of contractual rights. *Adams v. Miami Beach Hotel Association*, 77 So.2d 465 (Fla. 1955); see, e.g., *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) (holding a strong public interest – i.e., legislation to protect health, safety and welfare of the public – overrides impairment of contractual rights).

In the context of the reserve funding statute, one strong argument is that requiring proper reserve funding is a legitimate exercise of the state's police power because deferred maintenance of condominium common elements implicates the health and safety of residents (particularly in the wake of the Surfside condominium collapse). That leads to a persuasive argument that § 718.112(2)(f)(2)(a) is valid even as to associations with restrictive bylaws.

The combination of the statutory language and the policy rationale supports the position that the statute would override the bylaw limitation. In sum, the argument in favor of the statute's primacy is strong; there may be some residual risk of challenge under the Contracts Clause.

<u>Conclusion and Recommendation</u>

Therefore, the statute under § 718.112(2)(f)(2)(a) likely overrides your bylaw limitation on reserve increases to the extent the limitation would prevent the association from making the contributions required by statute.

Sincerely,

FRANK WEINBERG & BLACK, PL

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Board Certified in Condominium and Planned Development Law
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