

Condominium Board Member Certification

Division of Florida Condominiums, Timeshares and Mobile
Homes

2016





Compliance Offices

The Bureau of Compliance has offices in:

- * Tallahassee – Yacht & Ship Broker Licenses
 - * NEW ADDRESS: 2601 Blair Stone Road, Tallahassee FL 32399
- * Orlando – primarily handle timeshare cases
- * Tampa - Condo/Coop
- * Ft. Lauderdale/Miami – Condo/Coop
 - * Walk-ins are welcome!

Board Powers and Duties





Definition of the Board

718.103(4), F.S.

The “board of administration” or “board” means the representative body which is responsible for administration of the association.



Fiduciary Relationship

718.111(1)(a), F.S.

The officers and directors have a fiduciary relationship to the unit owners.

- * This means that the officers and directors must keep the interests of the association above their personal interests, and;
- * They shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interest of the association.



Association Powers and Duties

718.111(2), F.S.

- * The association powers and duties include those spelled out in the laws governing corporations in addition to those powers and duties provided in the Condominium Act.
- * The Division does not have authority to enforce Chapters 607, 617 or 720, Florida Statutes.

Association Powers and Duties, continued...

- * The association may enter into contracts, may sue, or be sued with respect to the exercise or non-exercise of its powers.
- * The association may institute, settle or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners.



Association Powers and Duties, continued...

The association has the power to:

- Make and collect assessments;
- Lease common elements;
- Maintain common elements;
- Repair / replace common elements or association property.
- Acquire title to property, real and personal.

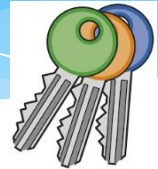


Association Powers and Duties, continued...

- * The Association has authority to purchase any land or recreation lease upon approval of voting interests as required by the declaration.
- * If no provision for approving is included in the declaration then the required approval is that needed to amend the declaration.

Changes Related to Condominiums 718.111(5), F.S.

Access to an Abandoned Condominium Unit:



The Association has a right to:

- * Inspect the unit and adjoining common elements;
- * Make repairs to the unit or to the common elements serving the unit, as needed;
- * Repair the unit if mold or deterioration is present;
- * Turn on the utilities for the unit; or
- * Otherwise maintain, preserve, or protect the unit and adjoining common elements.
- * A unit is presumed to be abandoned if the unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or no tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.



Changes Related to Condominiums 718.111(5), F.S, Continues...

- * Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.
- * The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.
- * The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney's fees.



Purchase of Units

718.111(9), F.S., Assessment and Liabilities 718.116(1)(a), F.S.

Purchase of Units:

- * Unless prohibited by the documents, associations have the power to purchase units in the condominium and to acquire, hold, lease, mortgage, and convey them.
- * The association has the right to purchase units at a foreclosure sale for unpaid assessments or to take title in lieu of foreclosure.

Assessments and Liability:

- * It defines that a “previous owner” does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure.
- * A present owner’s liability is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.



Changes Related to Condominiums 718.111(11)(j), F.S.

- * Responsibility for Damage to the condominium:
- * Clarifies that in the absence of an insurable event, the responsibility of reconstruction, repair or replacement is that of the association or by the unit owners as determined by the provisions of the declaration or bylaws.
- * **HB 791-clarifies in cases where the damage is not the result of an insurable event, the *maintenance* provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement. (effective July 1, 2015)**



Transfer Fees

718.112(2)(i), F.S.

- * No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, **but in no event may such fee exceed \$100 per applicant** other than husband/wife or parent/dependent child, which are considered one applicant.
- * If provided for in the declaration or bylaws, the association may require a prospective lessee to place a security deposit, not to exceed 1 months rent into escrow to protect against damage to the common elements or association property.

Budgets and Reserves





Budgets

718.112(2)(f), F.S.

- * The association must prepare an annual budget which shows the revenues and expenses for the upcoming year.
- * The **budget is a map** that will guide the board in making decisions during the course of the year. It is the board's formal written plan of the association's estimated future revenues and expenses.
- * Both the **proposed and adopted budgets** must be maintained in the **official records**, along with an **affidavit** that the budget meeting notice and proposed budget have been mailed to the unit owners.



Budget Meeting

718.112(2)(e)(f), F.S. & 61B-22.003(1), F.A.C.

Notice

- * Must be mailed, delivered or electronically transmitted not less than 14 days prior to the meeting.
 - Proposed budget - **Must** be included with the notice.
 - Reserves - **Must** include the reserve schedule with reserves shown as fully funded in the proposed budget.
- * Unless documents call for unit owners to adopt the budget, the board must adopt a budget with fully funded reserves, (unless reserves have been properly waived or reduced by unit owners).



Operating Budget Requirements 718.112(2)(f)1., and 718.504(21), F.S.

A Budget must include estimated revenues and expenses.

Revenues must include, if applicable:

- Assessments;
- Interest;
- Insurance proceeds;
- Any other form of income.



Operating Budget Requirements, continued...

Expenses must include:

- Annual condominium fees paid to the state;
- Insurance/Fidelity bonding.

If applicable:

- Administration expense;
- Management fees;
- Maintenance;
- Rent for recreational and other commonly used facilities;
- Taxes upon association property;
- Taxes upon leased areas;
- Security provisions.



Operating Budget Requirements, continued...

Any other expenses that the board knows will occur in the new budget year but may or may not be reoccurring. For example a termite retreatment which is not the same as the yearly inspection charge.



Other Required Information

61B-22.003(1), F.A.C.

- * Beginning and ending dates for the period covered by the budget;
- * Total expenses, including reserves on a least an annual basis;
- * Assessments per unit according to proportion of ownership - periodic (no less frequently than quarterly).



The 115% Rule

718.112(2)(e)2., F.S.

- * If assessments are greater than 115% of the previous year's assessments, unit owners **May** be entitled to consider an alternative budget.
- * The calculation:
 - From the total budget assessment, **subtract** those portions that result from:
 - Reserves;
 - Expenses not anticipated to be incurred on a regular or annual basis;
 - Betterments to the condominium property.

The 115% Rule, continued...

- * If the net assessments are still more than 115% of the corresponding net assessments from the previous year, then the process is as follows:
 - 10% of the unit owners may apply to the board for a unit owners' meeting to consider an alternative budget within 21 days after adoption of the annual budget.
 - The meeting must be held within 60 days after the adoption of the budget.
 - At least 14 days prior to the meeting, the board shall hand deliver or mail to each unit owner a notice of the meeting.

The 115% Rule, continued...

A majority of the voting interests may vote to approve an alternative budget proposed by either the board or the membership of the association. Failure to achieve the needed vote results in implementation of the board's adopted budget.



Reserves

61B-22.001(2),(3),(5), F.A.C.

- * **Capital expenditure** – Purchase or replacement of an asset with life of more than one year, or addition to existing asset to extend its life more than one year.
- * **Deferred maintenance** - Any maintenance or repair that will be performed less frequently than yearly and will result in maintaining the useful life of an asset.
- * **Reserves** - Any funds, other than operating funds, which are restricted for deferred maintenance and capital expenditures, including the items required by the Condominium Act, and any other funds restricted as to use by the condominium documents or the condominium association.



Requirements Regarding Reserves

718.112(2)(f)2., F.S.

Must include:

- Roof replacement;
- Building painting;
- Pavement resurfacing, and;
- Any other item of deferred maintenance or capital expenditure exceeding \$10,000, which may include retrofitting of fire sprinklers.



Requirements Regarding Reserves continued...

61B-22.003(1), F.A.C.

- * Proposed budget must include **fully funded** reserves.
- * Reserve schedule must be included with proposed budget.



Reserve Calculation

61B-22.005(3), F.A.C.

Need to know

- Total estimated life;
- Remaining estimated life (# years);
- Anticipated replacement/deferred maintenance cost;
- Anticipated beginning balance in reserve fund.



Straight Line Method Formula

The formula for using the straight line method is:

- * Anticipated replacement/deferred maintenance cost
less anticipated beginning balance in reserve fund
= Remaining reserves needed

- * Remaining reserves needed **divided by** remaining life (# years)
= amount needed in current year to fully fund

**SCHEDULE OF DEFERRED MAINTENANCE &
CAPITAL EXPENDITURE RESERVES**

(for the budgeting period of January 1, ____ through December 31, ____)

Reserve Items	Estimated Total Useful Life (in years)	Estimated Remaining Useful Life (in years)	Estimated Cost for Deferred Maintenance or a Capital Expenditure (\$)	Estimated Fund Balance as of 12-31-__ (\$)	Annual Funding (current year) (\$)
Roof Replacement	12	1	95,000	87,000	8,000
Pavement Resurfacing	18	7	55,000	30,472	3,504
Building Painting	5	4	92,000	19,968	18,008
Elevator Repair & Modernization	25	14	20,000	8,800	800
	T O T A L S		262,000	146,240	30,312



Pooled Reserves

Defined - The association may have a single source of funds to pay for multiple categories of reserve expenses. For example, if an association establishes a pooled reserve account for roof replacement, building painting and pavement resurfacing, funds may be drawn from this account to pay for any of the three items.

Prior to the change in the rules associations were required to maintain separate accounts for each of these items and approval from the membership would be required in order to use funds from one category to pay for another.



Pooled Method Formula

The amount of the contribution to the pooled reserve account shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect,

plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool is

= **or** > the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis.



Pooled Method Formula, continued...

- * The ending reserve fund balance must never go below zero;
- * The reserve funding formula shall not include any type of balloon payments;
- * Reserve funding must be calculated out over the remaining useful life of the asset with the longest useful life.



Pooled Reserve Schedule

Pooled Reserve Schedule									
For the Budget Period January 1, 20__ Through December 31, 20__									
				Projected Cash Outflows					
Replacement Item	Total Estimated Life	Remaining Life (Yrs)	Cost	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Roof Replacement	30	8	\$14,000	0	0	0	0	0	0
Building Painting	5	2	\$6,000	0	6,000	0	0	0	0
Pavement Resurfacing	20	3	\$10,000	0	0	10,000	0	0	0
Pool Re-Marcite	10	4	\$8,000	0	0	0	8,000	0	0
Total Projected Cash Outflows:				0	(6,000)	(10,000)	(8,000)	0	0
Beginning Cash Balance:				\$0	\$6,000	\$6,000	\$2,000	\$0	\$6,000
Annual Reserve Requirement:				\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Ending Cash Balance:				³⁴ \$6,000	\$6,000	\$2,000	\$0	\$6,000	\$12,000



Reserve Calculation, continued...

NOTE

Projected cost may be determined by incorporating a calculation for expected interest and inflation.

Interest

718.112(2)(f)3., F.S.

- * Must remain in reserve accounts.
- * Association may establish policy regarding allocation of interest among reserve accounts.





Commingling

61B-22.005(2), F.A.C.

The portion of periodic assessments that are for reserves must be deposited in the reserve account in no more than 30 days of receipt.



Other Reserves

61B-22.005(4), F.A.C.

- * The formula used need not be the statutory formula.
- * Must show the reserve calculation in a separate reserve section of the budget. Other reserves could be:
 - * Insurance deductible;
 - * Hurricane cleanup;
 - * Deferred maintenance and Capital Expenditures.



RETROFITTING CONDOMINIUMS

718.112.(2)(L), F.S.

61B-23.002(3)(4) F.A.C.

By **December 31, 2016**, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.



RETROFITTING CONDOMINIUMS

718.112.(2)(L), F.S.

61B-23.002(3)(4) F.A.C.

- * Condominium and cooperative associations are required to report to the division certain information regarding the membership vote to waive retrofitting requirements for fire sprinkler systems and handrails and guardrails. If the association does not waive retrofitting requirements, it must report the per unit cost of retrofitting to the division. Retrofitting information collected by the division is then reported to the State Fire Marshal on an annual basis.
- * **NOTE: In order to timely process your submission and send our acknowledgement letter to you, please include the current mailing address, as well as a contact name and phone number and/or email address in case we have a question regarding the information on the form. You may include the address and contact information on a separate cover sheet or simply note it on the form itself. Thank you for your assistance as we continue to process the forms.**
- * **Reminder: The deadline to vote for the waiver of retrofitting requirements for condominiums and cooperatives is December 31, 2016, pursuant to sections 718.112(2)(l) and 719.1055(5), Florida Statutes, respectively.**

RETROFITTING REPORT FOR CONDOMINIUMS

Name of condominium? _____

Name of the association? _____

The condominium FCTMH file number?

Condominium# [] [] [] [] [] []

(Insert one number per block – to be found in the division's annual billing statement)

Condominium Associations are required to report to the Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) certain information regarding the membership vote to waive retrofitting requirements for fire sprinkler systems and handrails and guardrails. See Chapters 2003-14 and 2004-80, Laws of Florida.

Please select the retrofitting information provided in this report (select only one, provide two reports if waiving requirements for both fire sprinkler systems and handrails and guardrails).

fire sprinkler systems

handrails and guardrails

(Mark an "X" in any applicable block and complete all requested information.)

1. The above-named condominium has voted to waive retrofitting as indicated above (please complete all blanks). The vote to waive retrofitting requirements was conducted:

- at a duly-called meeting of the association on _____ (fill in date); and/or
- by execution of written consents.

The specific results of that voting was...

_____ The number of unit owners voting to waive the State of Florida requirements.

_____ The number of unit owners voting not to waive the State of Florida requirements.

_____ The total number of voting interests in the condominium association.

A certificate attesting to this vote is recorded in the County of _____, Florida.

Book number _____ Page number _____.

2. The above-named condominium did not waive retrofitting requirements. Commencement of the retrofitting project took place on _____ (fill in date).

The per unit cost of the retrofitting project is: \$ _____

3. The above-named condominium already has fire sprinklers or handrails and guardrails installed pursuant to the requirements and guidelines of Chapter 633, Florida Statutes.

4. Please provide the last date the Association filed its Annual Report with the Office of the Florida Secretary of State: _____ (fill in date).

Signed and attested to by: _____, Corporate Officer

(Signature)

(Print Name)

(Title)

(Date)

Return by mail to:

Department of Business and Professional Regulation
Division of Florida Condominiums, Timeshares, and Mobile Homes
1940 North Monroe Street, Tallahassee, Florida 32399-1033
Attention: RETROFITTING CERTIFICATION

or

FAX this report to 1.850.921.5446

This information is subject to Florida's Public Records Law and will be provided to the Florida Division of State Fire Marshal of the Department of Financial Services.



Waiving Reserves or Providing Reserves less than Full Funding

718.112(2)(f)2., F.S.

- * May be accomplished at a duly called unit owners' meeting.
- * Vote required is a majority of those present or voting by limited proxy at the meeting, (assuming the quorum requirement is met).
- * Vote applies only to one fiscal year.



Use of Limited Proxy

718.112(2)(f)4. F.S.

The limited proxy for waiving of reserves must contain the following in bold letters in a font larger than any other used on the face of the proxy ballot:

- **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**



Limited Common Elements

718.113(1), F.S.

- * Handled just like reserves for other common elements.
- * Reserve assessments applied only to those specified in the declaration as sharing the cost of those limited common elements.



Unrestricted Expense Categories

61B-22.003(2), F.A.C.

Expense categories that are not restricted as to use shall be stated in the operating portion of the budget rather than the reserve portion of the budget.

Financial Reporting





What is a Year-end Financial Report? 718.111(13), F.S.

The condominium act requires every condominium association to prepare a year-end summary of the financial activities and financial position of the association.



Year-end Financial continued...

- The report covers the associations prior fiscal year. This may be a calendar year, January 1 to December 31, or it may be some other fiscal period, like October 1, to September 30.
- Due 90 after the end of the fiscal year or annually on a date provided in the bylaws.
- No later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

There are 2 types of Financial Reports.

- Report of Cash Receipts and Disbursements
- Financial Statements – 3 levels:
 - 1) Compiled Financial Statements
 - 2) Reviewed Financial Statements
 - 3) Audited Financial Statements



Who Prepares What?

Report of Cash Receipts and Disbursements

- Associations comprised of fewer than 50 units or less than \$150,000 in annual revenues.

Financial Statements

- Associations comprised of 50 or more units AND \$150,000 or more annual revenues and associations whose documents require financial statements.

Annual revenues for all types of financial reports required by the Act include but are not limited to the following:

- Member Assessments, (Regular and Special);
- Interest;
- Income, (Rental, Laundry, Ancillary Operations, Etc.);
- Insurance proceeds;
- Fees and Fines Collected;
- Any other form of association income.



Annual Expenses

Expenses may include but are not limited to:

- Fees to the Division
- Costs for security;
- Professional and management fees and expenses;
- Taxes;
- Costs for recreation facilities;
- Refuse collection;
- Utility services;
- Lawn care;
- Building maintenance and repair;
- Insurance costs;
- Administration and salary expenses.



Report of Cash Receipts and Disbursements

- * This is a report of the prior years financial activities prepared on a cash basis.
 - Cash basis - Reporting of receipts and expenditures as they actually occurred. This is similar to your check book, in that it shows cash coming in, (deposits) and cash going out (expenses).

This is a report of the prior years financial activities prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles, (GAAP).

- Accrual basis - Reporting of receipts and expenditures as they were earned or obligated.
- GAAP - financial accounting and reporting assumptions, standards, and practices that a business firm must use in preparing external financial statements.

There are three levels of financial statements. They are as follows:

- **Audit** – Fifty, (50), or more units and annual revenues of \$500,000 or more;
- **Review** – Fifty, (50), or more units and annual revenues of \$300,000 or more but less than \$500,000;
- **Compilation** – Fifty, (50), or more units and annual revenues of \$150,000 or more but less than \$300,000.



Financial Statements

- * Audited and Reviewed Financial Statements.
 - must be performed by an independent Florida Licensed CPA.
- * Compiled Financial Statements
 - Do not have to be prepared by a CPA.



Financial Statement Components

The financial statements must contain the following components:

- Accountant's or Auditor's Report;
- Balance Sheet;
- Statement of Revenues and Expenses;
- Statement of Changes in Fund Balances;
- Statement of Cash Flows;
- Notes to Financial Statements;
- Reserve Disclosure.

61B-22.006(2), F.A.C.

Year-end Disclosures

- * The following **reserve disclosures shall be made for all financial reports and financial statements regardless of whether reserves have been waived** for the fiscal period covered by the financial report:
 - The **beginning balance** in each reserve account;
 - The amount of assessments and **additions** to each reserve account;
 - The amount **expended or removed** from each reserve account;
 - The **ending balance** in each reserve account;
 - The amount of **annual funding required** to fully fund each reserve (not required⁵⁸ for pooled reserves);



Year-end Disclosures continued...

Reserves

- The manner by which reserve items were estimated;
- The date the estimates were last made;
- The association's policies for allocating reserve fund interest;
- Whether reserves have been waived for the period;
- The specific purpose or purposes of any special assessments to unit owners and the amount of each special assessment and the disposition of the funds collected.



Year-end Disclosures continued...

- The method by which income and expenses were allocated to the unit owners, (**not required in a cash report**);
- The amount of revenues and expenses related to limited common elements shall be disclosed when the association maintains the limited common elements and the expense is apportioned to those unit owners entitled to the exclusive use of the limited common elements.



Year-end Disclosures continued...

Multicondominium associations disclosures:

- Multicondominium associations may present the financial statements on a combined basis as long as the financial statements, notes, or supplementary information disclose the revenues, expenses, and changes in fund balance for each condominium, and the association, as applicable.
- The financial statements, notes, or supplementary information shall also disclose the revenues and expenses of the association that are not directly associated with specified condominiums, and the method used to allocate such expenses to the condominiums or units, as applicable.
- The reserve disclosures required by this rule shall be presented separately for each condominium and for any association reserves not specifically identified with individual condominiums.



Providing a Lower Level of Year-end Report

- * Majority vote of the voting interests present or by limited proxy at a properly called meeting of the association.
- * Must be taken before the end of the fiscal year.
- * Applies to the current fiscal year, except the approval may also be effective for the following fiscal year.



Providing a Lower Level of Year-end Report continued...

- * Financial reporting requirement may not be waived for more than 3 consecutive years.
- * Developer may cast His/Her votes only for the first 2 fiscal years.
- * Any audit or review prepared prior to turnover of control of the association shall be paid for by the developer.
- * **AN ASSOCIATION CANNOT WAIVE THE REQUIREMENT TO PREPARE THE YEAR-END FINANCIAL REPORT.**

718.111(13)(d)3., F.S.

Operations



Insurance

718.111(11), F.S.

- * The association shall use it's best effort to obtain and maintain insurance to protect the association, the association property, the common elements and the condominium property that is required to be insured by the association.
- * The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.





Insurance, continued...

The association **shall** obtain and maintain insurance or fidelity bonding to cover the following:

- The president, secretary, treasurer and all persons who control or disburse funds of the association;
- The policy or bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time.



Common Elements

718.111(4), F.S.

Associations cannot charge unit owners a fee to use the common elements unless:

- It is provided for in the declaration;
- Approved by a majority vote of the members of association;
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.



Maintenance of the Common Elements 718.113, F.S.

- * Responsibility of the association.
- * Declaration may provide that limited common elements are to be maintained by those entitled to use them.
- * Alterations or additions to common elements must be approved by unit owners.
 - If the declaration does not specify a process then approval of 75% of the voting interests is required.



Directors Voting at Board Meetings

718.111(1)(b), F.S.

- * Directors present at meetings have a duty to vote or abstain due to an asserted conflict of interest.
- * Not voting is presumed as assenting to the action taken.
- * A director who abstains from voting on any action taken, on any corporate matter, is presumed to have taken no position regarding the action.
- * The minutes are to show a vote or abstention for each member present.
- * Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot.



Meetings of Board of Board of Directors 718.112(2)(b) 5 and 718.112(2)(c)1, F.S.

- * A board or committee member can participate in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication. Directors who appear electronically count toward establishing a quorum, and can vote as if physically present.
- * Board members are permitted use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.
- * There is a time limitation of 60 days for the board to place an item on an agenda for the next board meeting if at least 20 percent of the voting interest petition for it to be added. There are some minor clarifying adjustments.



Commingling of Association Funds

718.111(14), F.S.

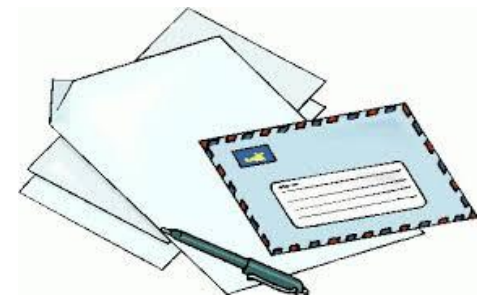
- * The board **SHALL NOT** commingle association funds with:
 - Any officer's, or director's private funds;
 - Any manager's, or employee's private funds;
 - Any other association's funds.

- * However, the board **MAY** commingle operating and reserve funds for investment purposes only. The funds must be accounted for separately and the account balance cannot go below the amount required for reserves.

Responding to Unit Owner Letter of Inquiry 718.112(2)(a)2, F.S.

For inquiries sent certified mail:

- A written response is required within 30 days of receipt;
- If response needs a legal opinion:
 - * Board has 60 days to provide substantive written response.
- If advice requested from Division;
 - * Board has 10 days from receipt of advice to provide substantive written response.





Amendment of Bylaws

718.112(2)(h), F.S.

- * If bylaws do not provide a method of amendment, amending takes approval of two-thirds of the voting interests.
- * No bylaw shall be revised or amended by reference to its title or number only.
- * Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended:
 - new words shall be inserted and the text underlined, and;
 - words to be deleted shall be lined through with hyphens.
- * However, if the proposed change is so extensive that this procedure would hinder rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following language:
“Substantial rewording of bylaw. See bylaw ___ for present text.”



Provide a Certificate Signed by an Officer or Agent of the Association 718.116(8), F.S.

- * Within 15 days after receiving a written request from a unit owner, purchaser, or mortgagee the board must provide a certificate that states all assessments and other monies owed to the association by the unit owner with respect to the condominium parcel.
- * This is also called an Estoppel Letter.

Obtain Competitive Bids

718.3026(1), F.S.

The association must obtain at least two competitive bids for contracts for items, services, or work that will exceed 5 percent of the annual budget, including reserves. This does not apply to contracts for the following:

- Employees of the association;
- Attorneys;
- Accountants;
- Architects;
- Community Association Managers;
- Timeshare Management Firms;
- Engineering and landscape architect services.



However, the association is not obligated to accept the lowest bid.



Unit Owner Delinquency Right to Collect from Tenant 718.116(11), F.S.

- * If a unit is occupied by a tenant and the unit owner is delinquent in the payment of any monetary obligation, the association may make a written demand that the tenant pay the obligation due related to the unit, until all monetary obligations of the owner have been paid in full to the association.
- * The association must provide the tenant a statutory notice by hand delivery or United States mail in a specific format when requesting rent.
- * After receiving the association's notice the tenant is not liable to the owner/landlord for any rent paid to the association instead of the owner.
- * The tenant's payment to the association begins after receiving notice. If the tenant has already made a payment to the unit owner/landlord for the month the notice was received, the tenant may avoid paying the association for that month if the tenant provides written evidence of payment.



Unit Owner Delinquency continued...

- * The tenant must pay the association until released or until the tenant vacates the unit.
- * The tenant is not liable for more than the owner's delinquency.
- * The association may evict a tenant for non-payment after the notice is delivered under Chapter 83, F.S.
- * The tenant by virtue of payment of assessments does not have the rights of the unit owner to vote in an election or have the right to access the records of the association.



Unit Owner Fine or Suspension of Use Rights 718.303(3), F.S.

- * The association may levy reasonable fines for the failure of a unit owner, it's occupant, licensee or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.
- * No fine will become a lien against a unit.
- * No fine with a single notice may exceed \$100 per violation and such fine shall not in the aggregate exceed \$1,000.
- * An association may suspend for a reasonable period of time, the right of a unit owner, unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.



Fines and Penalties

- * It is the board of administration of the association that levies any fines and that the committee formed to hear potential fines is limited to that purpose and must be impartial. The impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.
- * Permits associations to file a lien on unpaid administrative late fees.
- * When an owner or member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Additionally, any suspensions imposed apply even if the suspension arose from less than all of the units or parcels owned by the member.
- * Priority provisions for applying a homeowner's payments to a monetary obligation in ss. 718.116(3) F.S., respectively, apply notwithstanding any negotiated instrument resolving a dispute on the debt or any purported accord and satisfaction.



Unit Owner Fine or Suspension of Use Rights continued...

- **A fine or suspension may not be imposed except after giving at least 14 days' written notice** and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household.
- If the committee does not agree, the fine or suspension may not be imposed.



Unit Owner Delinquency Suspension of Use and Voting Rights

718.303(4),(5), F.S.

- * If a unit owner is more than 90 days delinquent in paying any monetary amount due to the association, the association may suspend the right of the unit owner, unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid. This does not include limited common elements intended to be used only by that unit, common elements that must be used to access the unit utility services provided to the unit, parking spaces, or elevators.
- * The association may suspend the unit owner's voting rights if they are more than 90 days delinquent in paying any monetary amount due to the association.
- * Regarding the suspension of use rights/voting rights, the board must give at least a 48 hours' notice of a board meeting and after the imposition of the suspension, the board must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.



Hold and Notice Meetings

718.112(2)(c), (d) & (e), F.S.

- * Associations must provide at least 48 hours notice of board and committee meetings, posted conspicuously on the association property.
- * Notice of the annual meeting, the budget meeting, and any meetings at which the board will vote on a special assessment or changes to rules concerning unit use must be mailed, delivered or electronically transmitted to unit owners and posted on the condominium property at least 14 continuous days in advance of the meeting.
- * Written notification of any special assessment must state the specific purpose of the special assessment and must be hand delivered or sent to each unit owner after the special assessment was approved.



Hold and Notice Meetings, continued...

- * Associations must provide notice of any legal action by which the association may be exposed to liability in excess of insurance coverage so that unit owners may intervene and defend on their own behalf.
- * Associations must allow unit owners or their designated representatives to speak at board and committee meetings subject to reasonable restrictions. If 20 percent of the voting interests petition the board to address an item of business, the board at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, shall place the item on the agenda.
- * Associations must provide 14 day notification of a hearing before a committee of other unit owners before the board can tax a fine or suspend use rights against a unit owner for a violation of the condominium documents or rules.

Annual Meeting of the Unit Owners

718.112(2)(d), F.S.

- * There shall be an annual meeting of the unit owners held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. The purpose of the annual meeting is:
 - To fill any vacancy on the board of administration caused by the expiration of a term which must be filled by electing a new board member. The election must be held the same **day** and place as the association's annual meeting.
 - To conduct any other business.
- * Written notice must be mailed, delivered or electronically transmitted to each unit owner and posted at least 14 continuous days preceding the meeting.

Elections





Advance Notice

Chapter 718.112(2)(d)(4)a, F.S

Two notices must be mailed, hand delivered or electronically transmitted to the unit owners prior to the election.

The First Notice of Election/Annual Meeting:

Must be mailed, hand delivered or electronically transmitted to each unit owner at least 60 days prior to the election and must contain the correct name and mailing address of the association. This notice should remind the unit owners that if they wish to run for election, they must submit their notices of intent, in writing to the association **not less than 40 days prior to the election.**



Advance Notice continued...

The Second Notice of Election/Annual Meeting.

Must be mailed or hand delivered to the unit owners with the annual meeting notice and agenda not less than 14 days, and not more than 34 days, prior to the election/annual meeting. If an election is to occur it must also included with the second notice the printed ballot, the envelopes for returning the completed ballot and any candidate information sheets that have been submitted to the board.

The election of the board members must take place at the same time and place as the annual meeting.



Electing Your Board of Administration

Nominating committees are prohibited by statute. Search committees may be used to encourage individuals to run for the board, however, they have no authority to nominate candidates for the board.

Candidates nominate themselves by giving notice to the association of their intent to run for the board.



Term of Office

- * The terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise prohibited by the bylaws.
- * Allows board members to serve two (2) year terms, staggered or otherwise, if the Bylaw or Articles of Incorporation permit such terms. **Timeshare condominium associations are exempt from this provision.**



Term of Office continued...

- * If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting.
- * Unless otherwise provided in the bylaws, any remaining vacancies **shall be filled by the affirmative** vote of the majority of the directors making up the new board even if there are less than a quorum or even 1 director. (This would be an appointment.)



Candidates for the Board 718.112(2)(d)2., F.S.

- * Defines the term “Candidate” as an eligible person who has timely submitted their written notice of intent to become a candidate.
- * Does not apply in a timeshare condominium, or if the term of a board member does not expire until a later annual meeting, or if all members’ terms would otherwise expire but there are no candidates.

Candidates Eligibility

- * Any unit owner or other eligible person desiring to be a candidate for board membership must give written notice of their intent to be a candidate to the association at least 40 days before the scheduled election and **must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run.** Therefore:
 - An incumbent board member is eligible for re-election unless the bylaws prohibit it.
 - A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association is not eligible for board membership.



Candidate Eligibility continued...

- * In a association of more than 10 units, co-owners of a unit may not serve on the board at the same time unless **they own more than one unit** or there are not enough eligible candidates to fill the vacancies on the board at the time of the election.
- * A convicted felon who has not had their rights completely restored for more than 5 years is not eligible for board membership.

Notices of Intent

- * Candidates for the board must give written notice to the board not less than 40 days prior to the election.
- * Written notice is effective when received by the association.
- * Such notices of intent should be submitted by one of the following methods:
 - Certified mail, return receipt requested
 - Personal delivery
 - Regular U.S. mail
 - Facsimile or telegram
- * Upon receipt of a timely delivered notice by personal delivery the association must issue a receipt acknowledging delivery of the written notice.

Campaigning

- * Candidates may campaign for office.
- * Candidates may submit a personal information sheet to the association for distribution:
 - At least 35 days prior to the election;
 - Sheet may not exceed one page;
 - May contain the candidate's:
 - Background;
 - Education;
 - Qualifications; and
 - Other relevant information.





Campaigning continued...

- * The association must distribute copies of such sheets with the second notice of election.
- * **The association may not edit, alter or otherwise modify the content of the information sheet.**
- * The original copy provided by the candidate becomes part of the official records of the association.

Ballots and Envelopes

The ballot:

- Must list all eligible candidates in alphabetical order by last name;
- Must not indicate whether any candidates are incumbents;
- Cannot contain write-in candidates;
- Must not have a space for the voter's signature;
- Must be uniform in color and appearance.





Ballots and Envelopes continued...

The association must provide to each eligible voter:

- At least one outer envelope that:
 - * Is pre-addressed to the person or entity authorized to receive ballots and;
 - * Contains a place for name of eligible voter, unit identification and voter's signature.
- One inner envelope;
- One ballot.

Ballots and Envelopes continued...

The unit owner:

- Places a marked ballot in the inner envelope;
- Owners of multiple units may place more than one inner envelope inside the outer envelope;
- Signs and identifies the unit or units for owners of multiple units on the outer envelope.





Ballots and Envelopes continued...

Once received by association:

- No ballot may be rescinded or changed;
- Ballots are not to be opened until the election meeting.

It is important to note that, for a regular election, balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy.



Conducting Your Election

- * The election of the board members must take place at the same time and place as the annual meeting.
- * While there is no quorum requirement for the election to take place, at least 20 percent of the eligible voters must cast ballots in order for the election to be valid.
- * The association must have additional blank ballots along with inner and outer envelopes available at the election for distribution to eligible voters who have not yet voted.
- * The first order of business at the election meeting is to collect the ballots not yet cast.



Conducting Your Election continued...

- * Upon receipt of a petition by 15% of the total voting interests in a condominium association, or 6 unit owners, whichever is greater, the Condominium Ombudsman will appoint an Election Monitor to conduct the annual election.
- * All costs associated with the election monitoring process shall be paid by the association.



Conducting Your Election continued...

All ballots must be handled by an impartial committee at the election meeting which:

- Is appointed by the board of directors;
- Cannot include current board members or their spouses, officers or their spouses or candidates for the board or their spouses;
- The impartial committee checks the signature and unit identification on the outer envelope against a list of qualified voters.

Conducting Your Election continued...

- * When the voter's name is found on the list, the voter's name is checked off as having voted.
- * Any outer envelope not signed by someone on the list of eligible voters is marked "disregarded" and any ballots inside it are not counted.
- * The business of the annual meeting may continue during this process.





Conducting Your Election continued...

- * After all the envelope information has been verified and the eligible voters' names checked off the roster, the outer envelopes may be opened.
- * As soon as the first outer envelope is opened the polls must close and no more ballots may be accepted.
- * The inner envelopes are first removed from the outer envelopes and placed in a receptacle.



Conducting Your Election continued...

- * Then the inner envelopes are opened and the ballots are removed and counted in the presence of the unit owners.
- * Any inner envelope containing more than one ballot is marked "disregarded" and the ballots contained inside are not counted.
- * **All envelopes and ballots, whether disregarded or not, must be retained by the association for one year.**

Who Wins?

- * The impartial committee tabulates the votes.
- * The candidates with the most votes win.
- * If there is a tie for the last seat, the association conducts a runoff.





Relinquishing Official Records

- * Requires an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under their control to the incoming board within 5 days after the election. An outgoing board or committee member who fails this requirement is personally subject to a civil penalty. Pursuant to 718.501(1)(d)6, F.S.



Tie Breaker

- * In the event of a tie, the association must conduct a runoff election between the candidates that tied for the last available seat, unless the bylaws provide a different method for deciding tie votes.
- * The runoff election must be held not less than 21 days nor more than 30 days after the date of the election at which the tie occurred.



Tie Breaker continued...

Within seven days of the election at which the tie vote occurred, the board must mail or personally deliver to the voters, a notice of the runoff election.

The notice must:

- * Inform the voters of the date of the runoff election;
- * Include a ballot conforming to the requirements of the regular election ballot;
- * Include copies of any candidate information sheets previously submitted by the candidates involved.



Assistance in Voting

Any individual who requires assistance to vote by reason of blindness, disability or inability to read or write may request the assistance of a member of the board of administration or other unit owner in casting the individual's vote.



Alternative Election Procedures

- * An association may use voting and election procedures different from those described in this presentation. **This only applies to associations of 10 or fewer units.**
- * In order to adopt alternate election procedures the bylaws must be amended to provide for alternate procedures, with approval of a majority of the total voting interests in the association.



Election Challenge

718.112(2)(d)4.c., F.S.

Any challenge to the election process must be commenced within 60 days after the election results are announced.





Board Member Certification

718.112(2)(d)4,b., F.S.

- * Within 90 days after being elected or appointed to the board, the board member must certify in writing to the secretary that he or she has read and understands the governing documents and will faithfully discharge his or her fiduciary responsibility.
- * In lieu of this certification, a newly elected or appointed board member may submit a certificate of satisfactory completion of educational curriculum administered by a division-approved condominium provider which was either taken 1 year before the election or 90 days after being elected or appointed.
- * The certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.



Board Member Certification continued...

- * Failure to do either of these means that the director is suspended from service on the board until he or she complies.
- * The board may temporarily fill the vacancy during the period of suspension.
- * Any vacancy created based on a director being suspended may be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.



Electronic Voting – First Notice

61B-23.0021(4) F.A.C.

Recap: 718.112(2)(d)4.a F.S. First Notice:

At least 60 days before a scheduled election, the association shall mail, deliver, or **electronically transmit**, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election

61B-23.0021(4) F.A.C. First Notice:

The first notice must also disclose the procedure and deadline to consent to electronic voting, if the board of administration has provided for and authorized an online voting system.



Electronic Voting Second Notice

718.112(2)(d)4.a, F.S., Second Notice:

Together with the written notice and agenda the association shall mail, deliver, **or electronically transmit** a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. With the costs of mailing, delivery, **or electronic transmission** and copying to be borne by the association.



Electronic Voting for Unit Owner Elections

61B-23.0021(10)(a) F.A.C.:

Upon the commencement of the opening of the outer envelopes or **accessing of the electronic votes**, whichever occurs first, the polls shall be closed, and no more ballots shall be accepted.

61B-23.0021(11)F.A.C.:

Electronic Voting. The requirements for providing an online voting system are contained in rule 61B-23.00211, F.A.C.



Electronic Voting Notice

718.112(2)(d)6 F.S. Notice of Meetings:

Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by **electronic transmission** to unit owners who consent to receive notice by **electronic transmission**.



Electronic Voting for Unit Owner Elections

718.128 F.S. Electronic Voting:

The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and if the following requirements are met:

- (1) The association provides each unit owner with:
 - (a) A method to authenticate the unit owner's identity to the online voting system.
 - (b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.
 - (c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.



Electronic Voting for Unit Owner Elections

- (2) The association uses an online voting system that is:
 - (a) Able to authenticate the unit owner's identity.
 - (b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
 - (c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.
 - (d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.
 - (e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.



Electronic Voting for Unit Owner Elections

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.



Electronic Voting for Unit Owner Elections

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.



Electronic Voting for Unit Owner Elections

(5) A unit owner’s consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

61B-23.00211 F.A.C. Electronic Voting:

(1) “Election Officials,” as used in Section 718.128, F.S., includes the division, the ombudsman, and election monitors appointed by the ombudsman.

(2) “Consent, in writing,” as used in Section 718.128, F.S., may be made via email; the email address of the unit owner consenting is not considered an official record, however, unless the unit owner has previously consented to receive notices via email.

(3) The board resolution required by Section 718.128(4), F.S., must provide that all unit owners receive notice of the opportunity to vote through an online voting system when the association utilizes online voting. The opportunity to vote online must be included in the notice of the meeting requiring the vote.



Electronic Voting for Unit Owner Elections

- * (4) The electronic voting system must provide the unit owner with a receipt of their vote, which must include the specific vote cast, the date and time of submission, and the user identification.
- * (5) The electronic voting system must produce an official record that the association must maintain, which identifies the specific votes cast on each ballot and the date and time of receipt of the electronically submitted ballot.
- * (6) For elections, electronic votes shall not be accessible to the association prior to the scheduled election. Failure to comply with this subsection will void the election and the association must re-notice the election following the procedures as set forth in subsection 61B- 23.0021(8), F.A.C.



Electronic Voting

718.128 F.S. Cont...

In addition, the condominium association's online voting system must be able to:

- Authenticate the member's identity.
 - Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
 - Transmit a receipt from the online voting system to each member who casts an electronic vote.
 - Permanently separate any authentication or identifying information from an electronic ballot for board elections, rendering it impossible to tie a ballot to a specific member.
 - Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.
- * The bill also provides that a member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum, and for condominium associations, a quorum established based on members voting electronically is only limited to the issue specifically identified in the electronic vote.



Electronic Transmission of Notices

61B-23.0029(1)F.A.C.: Definitions.

- * **“Electronic transmission”** means any form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by the recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process such as a printer or a copy machine. **Examples of electronic transmission** include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers. **Electronic transmission** does not include oral communication by telephone.



Electronic Transmission of Notices

61B-23.0029(2)F.A.C.: Association Notices.

- * (a) Associations may opt to deliver meeting notices **by electronic transmission** by following these rules or by adopting bylaws that are consistent with these requirements.
- * (b) Associations that decide to stop delivery of notices
- * **by electronic transmission** shall notify all owners by
- * electronic transmission of the date on which **electronic**
- * **transmission of notices** will cease. Associations must mail
- * the notice to those owners whose consent has been revoked
- * or was never given.



Electronic Transmission of Notices

61B-23.0029(3)(a)F.A.C.: Consent and Revocation of Consent.

In order to be effective, any consent given by a unit owner to receive notices **via electronic transmission**, and any revocation of consent, must be in writing and must be signed by the owner of record or by a person holding a power of attorney executed by the owner of record. Consent or revocation of consent may be delivered to the association **via electronic transmission**, by hand-delivery, by United States mail, by certified United States mail, or by other commercial delivery service. The unit owner bears the risk of ensuring delivery.



Electronic Transmission of Notices

61B-23.0029(3)(b)F.A.C.: Delivery of Consent or Revocation of Consent.

Any consent given by a unit owner to receive notices **via electronic transmission** must be actually received by a current officer, board member, or manager of the association, or by the association's registered agent. Unless otherwise agreed to by an association in advance of delivery of any consent or revocation of consent, delivery to an attorney who has represented the association in other legal matters will not be effective unless that attorney is also a board member, officer, or registered agent of the association.



Electronic Transmission of Notices

61B-23.0029(3)(c)F.A.C.: Automatic Revocation of Consent.

Consent shall be automatically revoked if the association is unsuccessful in providing notice **via electronic transmission** for two consecutive transmissions to an owner, if and when the association becomes aware of such electronic failures.



Electronic Transmission of Notices

61B-23.0029(4)F.A.C.: Attachments and Other Information.

In order to be effective notice, notice of a meeting delivered **via electronic transmission** must contain all attachments and information required by law. For example, but not by way of limitation, the second notice of election provided by Section 718.112(2)(d)3., F.S., must contain a second notice of the election along with the ballot and any valid candidate information sheets that are timely received. As a further example, electronic transmission of the budget meeting shall only be effective if a copy of the proposed annual budget accompanies the notice of budget meeting.



Electronic Transmission of Notices

61B-23.0029(5)F.A.C.: Effect of Sending Electronic Meeting Notice.

Notice of a meeting is effective when sent by the association, regardless of when the notice is actually received by the owner, if directed to the correct address, location or number, or if posted on a web site or internet location to which the owner has consented. The owner, by consenting to **notice via electronic transmission**, accepts the risk of not receiving electronic notice, except as provided in paragraph (2)(c) of this rule, so long as the association correctly directed the transmission to the address, number, or location provided by the owner. An affidavit of the secretary or other authorized agent of the association filed among the official records of the association that the notice has been duly provided **via electronic transmission** is verification that valid electronic transmission of the notice has occurred. An association may elect to provide, but is not required to provide, notice of meetings via non-electronic transmission even if notice has been sent to the same owner or owners via electronic transmission.



Electronic Transmission of Notices

61B-23.0029(6)F.A.C.: Official Records.

The association shall maintain among its official records, which shall be accessible to the owners or their duly authorized representatives, all consent forms including electronic numbers, addresses and locations, all affidavits, all fax receipts of notice and related communications, copies of all electronic notices and attachments sent by the association, and any other record created or received by the association related to the **electronic transmission of meeting notices**, except as provided in Section 718.111(12)(a)7., F.S. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.



Electronic Transmission May NOT be Used:

718.112(2)(j) Recall of Board Members:

Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

Section 718.112(2)(l) F.S.: Certificate of Compliance:

If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting.

Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.

Official Records





Official Records

718.111(12), F.S.

- * Florida law requires condominiums to maintain the official records of the association within the state for at least 7 years.
- * The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of written request by the board or its designee.



Inspection

- * An association's official records must be available for inspection by unit owners or their authorized representative at all reasonable times.
- * An association may comply with this requirement by maintaining a copy of the official records on the condominium association property and making them available for inspection or copying.



Copies

- * Unit owners have the right to make or obtain copies of official records.
- * The association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspection and copying.
- * Associations must maintain an adequate number of copies of the declaration of condominium, articles of incorporation, bylaws, rules, all amendments to those documents, the question and answer sheet and the year-end financial information.



Copies continued...

An association shall allow a member or his/her authorized representative to use a portable device, such as a smartphone, tablet, portable scanner, or other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing a copy of such records. The association may not charge a member or his/her authorized representative for the use of a portable device.

Denial of Access

- * If an association fails to provide requested records within ten working days after receipt of a written request, the unit owner may be entitled to damages.
- * The failure of the board to allow inspection of books and records constitutes a dispute for which a unit owner may either file a complaint with the Division or petition the Division for mandatory nonbinding arbitration.





The Official Records of an Association Must Include

- * Copies of the plans, permits, warranties and other items provided by the developer.
- * Copies of the recorded declaration for each condominium, articles of incorporation, bylaws and any amendments to them and the current rules of the association.
- * Minutes of all association, board and unit owner meetings, which must be kept for at least seven years.
- * A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, telephone numbers, if known, and email addresses and fax numbers of those owners who have consented to receiving communications by these means.
- * Current insurance policies.



The Official Records of an Association Must Include

- * Current copy of any management agreement, lease or other contract for the benefit of the members.
- * Bills of sale or transfer for all property owned by the association.
- * Accounting records for the association and separate accounting records for each condominium the association operates, for a minimum of seven years, including but not limited to:
 - Itemized records of all receipts and expenditures;
 - Current statement of account for each unit owner including the unit owner's name, the due date and amount of each assessment, the amount paid on the account and the balance due;
 - All audits, reviews, accounting statements and financial reports of the association;
 - All contracts for work to be performed, including bids for work to be performed.



The Official Records of an Association Must Include

- * Ballots, sign-in sheets, voting proxies and all other papers relating to voting by unit owners. These items must be kept for one year from the date of the election, vote or meeting to which the document relates.
- * All rental records when the association is acting as a rental agent.
- * Current *Frequently Asked Questions and Answers* sheet.
- * Other written documents related to the operation of the association. The following are examples:
 - Correspondence and other written communication from the Division;
 - Invoices for purchases made by the association;
 - Copies of all insurance records.



The Official Records of an Association Must Include if required

- * A copy of the inspection report under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:
 - Roof;
 - Structure;
 - Fireproofing and fire protection systems;
 - Elevators;
 - Heating and cooling systems;
 - Plumbing;
 - Electrical systems;
 - Swimming pool or spa and equipment;
 - Seawalls;
 - Pavement and parking areas;
 - Drainage systems;
 - Painting;
 - Irrigation systems.



Record NOT Available for Inspection by Owners

- * Records prepared by or at the direction of an association attorney which reflect legal conclusions, strategies or legal theories and which were prepared for civil or criminal litigation or adversarial administrative proceedings until the conclusion of those proceedings.
- * Certain information obtained by an association in connection with the approval of the lease, sale or some other form of transfer of a unit.
- * Personnel records of association or management company employees, including but not limited to, disciplinary, payroll, health, and insurance records. The term personnel records does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

PROTECTED

Record not Available for Inspection by Owners continued...

- * Medical records of unit owners.
- * Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements.

PROTECTED

Record not Available for Inspection by Owners continued...

- * Any electronic security measure that is used by the association to safeguard data, including passwords.



- * The software and operating system used by the association which allows manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Condominium Association Directory

- * An Association may publish a unit owner directory for the convenience of the members. A directory may include unit owners' names, unit addresses, and a phone number. A unit owner may opt out of being published in the directory. Multiple phone numbers may be published, and a unit owner may consent to having other contact information published.





Association Records – Liability

718.111(12)(c)5., F.S.

The association is not liable for the inadvertent disclosure of information that is protected under this section if the information is included in an official record of the association and is **voluntarily provided by an owner** and not requested by the association. This is a possible arbitration issue.



Customer Contact Center

- * For additional information concerning the Condominium or Cooperative Acts and to request copies of educational materials available to condominium and cooperative unit owners, you may contact the Department's Customer Contact Center at **1-800-226-9101** (Florida Only) or **850-488-1122**.
- * You may also e-mail the Department by completing our contact form online at **Call.center@myfloridalicense.com**
- * Statutes and other information concerning the division are available on the World Wide Web at **www.myfloridalicense.com/dbpr/lsc/index.html**