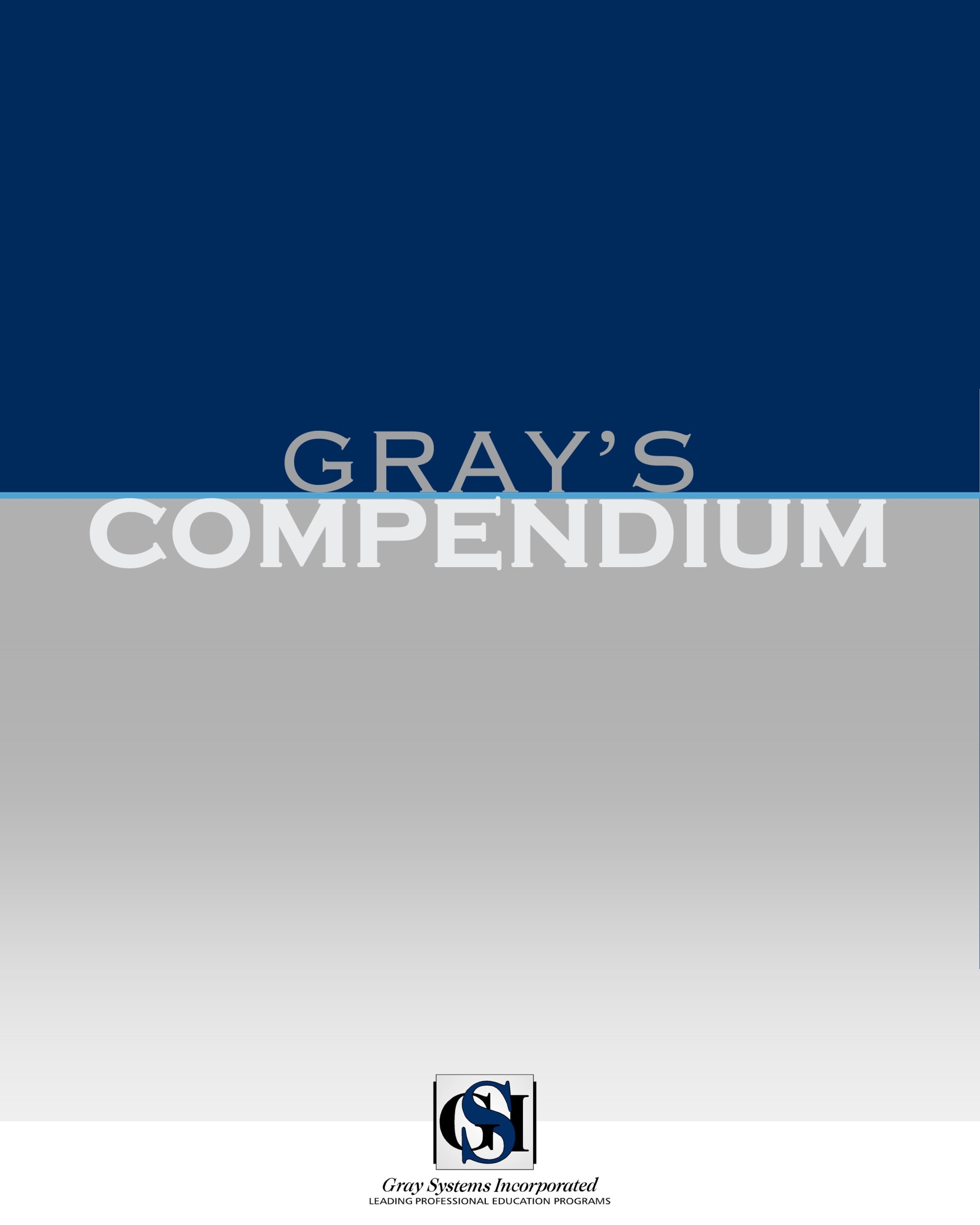
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# GRAY’S COMPENDIUM FOR COMMUNITY ASSOCIATION MANAGEMENT

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***August 2019***

## INTRODUCTION

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*Definition of Compendium - A collection of concise but detailed information about a particular subject.* Gray Systems, Incorporated began publishing ***Gray’s Compendium*** of Florida Statutes and Florida Administrative Code in 1994. In 1998, we began publishing ***Gray’s Handbook*** of Community Association Management, get yours today.

***Gray’s Compendium*** is a compilation of all of the Florida statutes and provisions of the Florida administrative code that impact the operations of a community association. Gray’s Handbook is an operational guide to managing a community association. We have addressed all of the operational responsibilities of a community association and also referenced the handbook back to the statute where appropriate.

When you go to the table of contents for the statutes, all of the various laws are listed in numerical sequence. You can click on each law and you will go to the first page of that statute where you will also have a link to the table of contents for that statute. You may click on each item in the table of contents for that statute and you’ll be taken to that section, or you can scroll through page by page.

You may also on the front page, click the link to the Florida Administrative Code where you also be taken to the table of contents of that section of the F.A.C.. When you click on the section of the code that you are inquiring about, it will take you to that code, which will also have a table of contents.

We hope you benefit from this product and enhance your abilities and knowledge as a community association manager in the state of Florida. If we may be of assistance to you with regard to using this product or by answering questions about it, please do not hesitate to contact us. Our contact information follows.

Thank you for being a user of our products.

Email: [gsi@graysystems.com](mailto:gsi@graysystems.com)  
Phone: 800-223-5457  
Fred Gray Directly: [fgray@graysystems.com](mailto:fgray@graysystems.com?subject=Gray's%20Electronic%20Compendium%20and%20Handbook)

Suzanne Gray Directly: [sgray@graysystems.com](mailto:sgray@graysystems.com)

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# Landlord and Tenant

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# PART I NONRESIDENTIAL TENANCIES

## 83.001 Application.—

This part applies to nonresidential tenancies and all tenancies not governed by part II of this chapter.

## 83.01 Unwritten lease tenancy at will; duration.—

Any lease of lands and tenements, or either, made shall be deemed and held to be a tenancy at will unless it shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

## 83.02 Certain written leases tenancies at will; duration.—

Where any tenancy has been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which tenancy is unlimited, the tenancy shall be a tenancy at will. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then the tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

## 83.03 Termination of tenancy at will; length of notice.—

A tenancy at will may be terminated by either party giving notice as follows:

(1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to the end of any annual period;

(2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;

(3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

## 83.04 Holding over after term, tenancy at sufferance, etc.—

When any tenancy created by an instrument in writing, the term of which is limited, has expired and the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over shall be construed to be a tenancy at sufferance. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

## 83.05 Right of possession upon default in rent; determination of right of possession in action or surrender or abandonment of premises.—

(1) If any person leasing or renting any land or premises other than a dwelling unit fails to pay the rent at the time it becomes due, the lessor has the right to obtain possession of the premises as provided by law.

(2) The landlord shall recover possession of rented premises only:

(a) In an action for possession under ss. 83.20, or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the rented premises to the landlord; or

(c) When the tenant has abandoned the rented premises.

(3) In the absence of actual knowledge of abandonment, it shall be presumed for purposes of paragraph (2)(c) that the tenant has abandoned the rented premises if:

(a) The landlord reasonably believes that the tenant has been absent from the rented premises for a period of 30 consecutive days;

(b) The rent is not current; and

(c) A notice pursuant to ss. 83.20(2) has been served and 10 days have elapsed since service of such notice. However, this presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.

## 83.06 Right to demand double rent upon refusal to deliver possession.—

(1) When any tenant refuses to give up possession of the premises at the end of the tenant's lease, the landlord, the landlord's agent, attorney, or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

(2) All contracts for rent, verbal or in writing, shall bear interest from the time the rent becomes due, any law, usage or custom to the contrary notwithstanding.

## 83.07 Action for use and occupation.—

Any landlord, the landlord's heirs, executors, administrators or assigns may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by the landlord's permission in an action on the case for the use and occupation of the lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any action, any demise or agreement (not being by deed) whereby a certain rent was reserved is given in evidence, the plaintiff shall not be dismissed but may make use thereof as an evidence of the quantum of damages to be recovered.

## 83.08 Landlord's lien for rent.—

Every person to whom rent may be due, the person's heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his or her sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

## 83.09 Exemptions from liens for rent.—

No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel.

## 83.10 Landlord's lien for advances.—

Landlords shall have a lien on the crop grown on rented land for advances made in money or other things of value, whether made directly by them or at their instance and requested by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market. They shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all the property or articles so advanced. The liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

## 83.11 Distress for rent; complaint.—

Any person to whom any rent or money for advances is due or the person's agent or attorney may file an action in the court in the county where the land lies having jurisdiction of the amount claimed, and the court shall have jurisdiction to order the relief provided in this part. The complaint shall be verified and shall allege the name and relationship of the defendant to the plaintiff, how the obligation for rent arose, the amount or quality and value of the rent due for such land, or the advances, and whether payable in money, an agricultural product, or any other thing of value.

## 83.12 Form of writ.—

A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders. A violation of the command of the writ may be punished as a contempt of court. If the defendant does not move for dissolution of the writ as provided in ss. 83.135, the sheriff shall, pursuant to a further order of the court, levy on the property liable to distress forthwith after the time for answering the complaint has expired. Before the writ issues, the plaintiff or the plaintiff's agent or attorney shall file a bond with surety to be approved by the clerk payable to defendant in at least double the sum demanded or, if property, in double the value of the property sought to be levied on, conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the distress.

## 83.13 Levy of writ.—

The sheriff shall execute the writ by service on defendant and, upon the order of the court, by levy on property distrainable for rent or advances, if found in the sheriff's jurisdiction. If the property is in another jurisdiction, the party who had the writ issued shall deliver the writ to the sheriff in the other jurisdiction; and that sheriff shall execute the writ, upon order of the court, by levying on the property and delivering it to the sheriff of the county in which the action is pending, to be disposed of according to law, unless he or she is ordered by the court from which the writ emanated to hold the property and dispose of it in his or her jurisdiction according to law. If the plaintiff shows by a sworn statement that the defendant cannot be found within the state, the levy on the property suffices as service on the defendant.

## 83.135 Dissolution of writ.—

The defendant may move for dissolution of a distress writ at any time. The court shall hear the motion not later than the day on which the sheriff is authorized under the writ to levy on property liable under distress. If the plaintiff proves a prima facie case, or if the defendant defaults, the court shall order the sheriff to proceed with the levy.

## 83.14 Replevy of distrained property.—

The property distrained may be restored to the defendant at any time on the defendant's giving bond with surety to the sheriff levying the writ. The bond shall be approved by such sheriff; made payable to plaintiff in double the value of the property levied on, with the value to be fixed by the sheriff; and conditioned for the forthcoming of the property restored to abide the final order of the court. It may be also restored to defendant on defendant's giving bond with surety to be approved by the sheriff making the levy conditioned to pay the plaintiff the amount or value of the rental or advances which may be adjudicated to be payable to plaintiff. Judgment may be entered against the surety on such bonds in the manner and with like effect as provided in ss. 76.31.

## 83.15 Claims by third persons.—

Any third person claiming any property so distrained may interpose and prosecute his or her claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

## 83.18 Distress for rent; trial; verdict; judgment.—

If the verdict or the finding of the court is for plaintiff, judgment shall be rendered against defendant for the amount or value of the rental or advances, including interest and costs, and against the surety on defendant's bond as provided for in ss. 83.14, if the property has been restored to defendant, and execution shall issue. If the verdict or the finding of the court is for defendant, the action shall be dismissed and defendant shall have judgment and execution against plaintiff for costs.

## 83.19 Sale of property distrained.—

(1) If the judgment is for plaintiff and the property in whole or in part has not been replevied, it, or the part not restored to the defendant, shall be sold and the proceeds applied on the payment of the execution. If the rental or any part of it is due in agricultural products and the property distrained, or any part of it, is of a similar kind to that claimed in the complaint, the property up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed), may be delivered to the plaintiff as a payment on the plaintiff's execution at his or her request.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on shall be sold at the location advertised in the notice of sheriff's sale.

(3) Before the sale if defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to defendant and there shall be no sale.

(4) In case any property is sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of the rental at the time it became due.

## 83.20 Causes for removal of tenants.—

Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(1) Where such person holds over and continues in the possession of the demised premises, or any part thereof, after the expiration of the person's time, without the permission of the person's landlord.

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

## 83.201 Notice to landlord of failure to maintain or repair, rendering premises wholly untenantable; right to withhold rent.—

When the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon the landlord, and the landlord has failed or refused to do so, rendering the leased premises wholly untenantable, the tenant may withhold rent after notice to the landlord. The tenant shall serve the landlord, in the manner prescribed by ss. 83.20(3), with a written notice declaring the premises to be wholly untenantable, giving the landlord at least 20 days to make the specifically described repair or maintenance, and stating that the tenant will withhold the rent for the next rental period and thereafter until the repair or maintenance has been performed. The lease may provide for a longer period of time for repair or maintenance. Once the landlord has completed the repair or maintenance, the tenant shall pay the landlord the amounts of rent withheld. If the landlord does not complete the repair or maintenance in the allotted time, the parties may extend the time by written agreement or the tenant may abandon the premises, retain the amounts of rent withheld, terminate the lease, and avoid any liability for future rent or charges under the lease. This section is cumulative to other existing remedies, and this section does not prevent any tenant from exercising his or her other remedies.

## 83.202 Waiver of right to proceed with eviction claim.—

The landlord's acceptance of the full amount of rent past due, with knowledge of the tenant's breach of the lease by nonpayment, shall be considered a waiver of the landlord's right to proceed with an eviction claim for nonpayment of that rent. Acceptance of the rent includes conduct by the landlord concerning any tender of the rent by the tenant which is inconsistent with reasonably prompt return of the payment to the tenant.

## 83.21 Removal of tenant.—

The landlord, the landlord's attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in ss. 51.011.

## 83.22 Removal of tenant; service.—

(1) After at least two attempts to obtain service as provided by law, if the defendant cannot be found in the county in which the action is pending and either the defendant has no usual place of abode in the county or there is no person 15 years of age or older residing at the defendant's usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceeding. The minimum time delay between the two attempts to obtain service shall be 6 hours.

(2) If a landlord causes, or anticipates causing, a defendant to be served with a summons and complaint solely by attaching them to some conspicuous part of the premises involved in the proceeding, the landlord shall provide the clerk of the court with two additional copies of the complaint and two prestamped envelopes addressed to the defendant. One envelope shall be addressed to such address or location as has been designated by the tenant for receipt of notice in a written lease or other agreement or, if none has been designated, to the residence of the tenant, if known. The second envelope shall be addressed to the last known business address of the tenant. The clerk of the court shall immediately mail the copies of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later; and at least 5 days from the date of service must have elapsed before a judgment for final removal of the defendant may be entered.

## 83.231 Removal of tenant; judgment.—

If the issues are found for plaintiff, judgment shall be entered that plaintiff recover possession of the premises. If the plaintiff expressly and specifically sought money damages in the complaint, in addition to awarding possession of the premises to the plaintiff, the court shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the plaintiff and against the defendant for the amount of money found due, owing, and unpaid by the defendant, with costs. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court, and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. Where otherwise authorized by law, the plaintiff in the judgment for possession and money damages may also be awarded attorney fees and costs. If the issues are found for defendant, judgment shall be entered dismissing the action.

## 83.232 Rent paid into registry of court.—

(1) In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the day that the court makes its determination. The court may, however, extend these time periods to allow for later payment, upon good cause shown. Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, may order the tenant to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease. If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds so held in the court registry.

(2) If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:

(a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and

(b) What properly constitutes rent under the provisions of the lease.

(3) The court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.

(4) The filing of a counterclaim for money damages does not relieve the tenant from depositing rent due into the registry of the court.

(5) Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

## 83.241 Removal of tenant; process.—

After entry of judgment in favor of plaintiff the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put plaintiff in possession.

## 83.251 Removal of tenant; costs.—

The prevailing party shall have judgment for costs and execution shall issue therefor.

# PART II RESIDENTIAL TENANCIES

## 83.40 Short title.—

This part shall be known as the “Florida Residential Landlord and Tenant Act”

## 83.41 Application.—

This part applies to the rental of a dwelling unit.

## 83.42 Exclusions from application of part.—

This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the provisions of s. [400.0255](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0400/Sections/0400.0255.html) are the exclusive procedures for all transfers and discharges.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months’ rent or in which the buyer has paid at least 1 month’s rent and a deposit of at least 5 percent of the purchase price of the property.

(3) Transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

## 83.43 Definitions.—

As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) “Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) “Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

(3) “Landlord" means the owner or lessor of a dwelling unit.

(4) “Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) “Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) “Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) “Rental agreement" means any written agreement, including amendments or addenda, or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.

(8) “Good faith" means honesty in fact in the conduct or transaction concerned.

(9) “Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) “Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) “Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) “Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

(13) “Legal holiday" means holidays observed by the clerk of the court.

(14) “Servicemember” shall have the same meaning as provided in s. 250.01.

(15) “Active duty” shall have the same meaning as provided in s. 250.01.

(16) “State active duty” shall have the same meaning as provided in s. 250.01.

(17) “Early termination fee” means any charge, fee, or forfeiture that is provided for in a written rental agreement and is assessed to a tenant when a tenant elects to terminate the rental agreement, as provided in the agreement, and vacates a dwelling unit before the end of the rental agreement. An early termination fee does not include:

(a) Unpaid rent and other accrued charges through the end of the month in which the landlord retakes possession of the dwelling unit.

(b) Charges for damages to the dwelling unit.

(c) Charges associated with a rental agreement settlement, release, buyout, or accord and satisfaction agreement.

## 83.44 Obligation of good faith.—

Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

## 83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

## 83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

## 83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

## 83.48 Attorney fees.—

In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs, from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

## 83.49 Deposit money or advance rent; duty of landlord and tenant.—

[(See Also 61J2-10.032 Notice Requirements.)](#_61J2-2.032_Informal_Hearings.)

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or $50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of $250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit.

Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held or state that the landlord has posted a surety bond as provided by law.

(c) State whether the tenant is entitled to interest on the deposit.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD’S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD’S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD’S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord’s agent may disburse advance rents from the deposit account to the landlord’s benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of upon your security deposit, due to. It is sent to you as required by ss. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (Landlord's address).

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in ss. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent, and upon transmittal of a written receipt therefor, the transferor is free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposit from the previous owner or agent; however, this presumption is limited to 1 month’s rent. This subsection does not excuse the landlord or agent for a violation of other provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of ss. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in ss. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

Section 4. The Legislature recognizes that landlords may have stocks of preprinted lease forms that comply with the notice requirements of current law. Accordingly, for leases entered into on or before December 31, 2013, a landlord may give notice that contains the disclosure required in the changes made by this act to s. 83.49, Florida Statutes, or the former notice required in s. 83.49, Florida Statutes 2012. In any event, the disclosure required by this act is only required for all leases entered into under this part on or after January 1, 2014.

## 83.50 Disclosure of landlord’s address.—

In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address. (1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2) (a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term “smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under ss. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

## 83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement. The landlord is required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2) (a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term “smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under ss. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

## 83.52 Tenant's obligation to maintain dwelling unit.—

The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

## 83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. “Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection(1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

## 83.535 Flotation bedding system; restrictions on use.—

No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

## 83.54 Enforcement of rights and duties; civil action; criminal offenses.—

Any right or duty declared in this part is enforceable by civil action. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

## 83.55 Right of action for damages.—

If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

## 83.56 Termination of rental agreement.—

(1) If the landlord materially fails to comply with ss. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with ss. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with ss. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be in substantially the following form:

You are advised that your lease is terminated effective immediately.You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance).

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date that the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.

If such noncompliance recurs within 12 months after notice, an eviction action may commence without delivering a subsequent notice pursuant to paragraph (a) or this paragraph. The notice shall be in substantially the following form:

You are hereby notified that (cite the noncompliance) . Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without further warning and without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the day of, (year). (Landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5) (a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance by accepting partial rent for the period. If partial rent is accepted after posting the notice for nonpayment, the landlord must:

1. Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession;

2. Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession; or

3. Post a new 3-day notice reflecting the new amount due.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must comply with ss. 83.60(2). The court may not set a date for mediation or trial unless the provisions of ss. 83.60(2) have been met, but must enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with ss. 83.60(2).

(c) This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with ss. 83.49(3).

### 83.5615 Protecting Tenants at Foreclosure Act.—

(1) This section may be cited as the “Protecting Tenants at Foreclosure Act.”

(2) In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the effective date of this section, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

(a) The successor in interest providing a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice; and

(b) The rights of any bona fide tenant:

1. Under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the tenant receiving the 90-day notice under paragraph (a); or

2. Without a lease or with a lease terminable at will, subject to the tenant receiving the 90-day notice under paragraph (a).

This subsection does not affect the requirements for termination of any federal- or state-subsidized tenancy or of any state or local law that provides more time or other additional protections for tenants.

(3) For the purposes of this section:

(a) A lease or tenancy shall be considered bona fide only if:

1. The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

2. The lease or tenancy was the result of an arms-length transaction; and

3. The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a federal, state, or local subsidy.

(b) The term “federally-related mortgage loan” has the same meaning as in 12 U.S.C. s. 2602.

(c) The date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

Section 3. If the Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, is repealed, the director of the Division of Consumer Services of the Department of Agriculture and Consumer Services shall notify the Division of Law Revision within 10 days after the repeal.

## 83.57 Termination of tenancy without specific term.—

A tenancy without a specific duration, as defined in ss. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in ss. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

## 83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement, if such provision requires the landlord to notify the tenant within such notice period if the rental agreement will not be renewed; however, a rental agreement may not require more than 60 days’ notice from either the tenant of the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant’s obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month’s rent.

## 83.58 Remedies; tenant holding over.—

If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in ss. 83.59. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

## 83.59 Right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in ss. 51, and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord;

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption does not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence: or

(d) When the last remaining tenant of a dwelling unit is deceased, personal property remains on the premises, rent is unpaid, at least 60 days have elapsed following the date of death, and the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative. This paragraph does not apply to a dwelling unit used in connection with a federally administered or regulated housing program, including programs under s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

## 83.595 Choice of remedies upon breach or early termination by tenant.—

If the tenant breaches the rental agreement for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(1) Treat the rental agreement as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;

(2) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rent stipulated to be paid under the rental agreement and what the landlord is able to recover from a reletting. If the landlord retakes possession, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rent received by the landlord as a result of the reletting must be deducted from the balance of rent due from the tenant. For purposes of this subsection, the term “good faith in attempting to relet the premises” means that the landlord uses at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to rent other similar rental units but does not require the landlord to give a preference in renting the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent;

(3) Stand by and do nothing, holding the lessee liable for the rent as it comes due; or

(4) Charge liquidated damages, as provided in the rental agreement, or an early termination fee to the tenant if the landlord and tenant have agreed to liquidated damages or an early termination fee, if the amount does not exceed 2 months’ rent, and if, in the case of an early termination fee, the tenant is required to give no more than 60 days’ notice, as provided in the rental agreement, prior to the proposed date of early termination. This remedy is available only if the tenant and the landlord, at the time the rental agreement was made, indicated acceptance of liquidated damages or an early termination fee. The tenant must indicate acceptance of liquidated damages or an early termination fee by signing a separate addendum to the rental agreement containing a provision in substantially the following form:

[....] I agree, as provided in the rental agreement, to pay $.... (an amount

that does not exceed 2 months’ rent) as liquidated damages or an early

termination fee if I elect to terminate the rental agreement, and the landlord

waives the right to seek additional rent beyond the month in which the

landlord retakes possession.

[....] I do not agree to liquidated damages or an early termination fee, and

I acknowledge that the landlord may seek damages as provided by law.

(a) In addition to liquidated damages or an early termination fee, the landlord is entitled to the rent and other charges accrued through the end of the month in which the landlord retakes possession of the dwelling unit and charges for damages to the dwelling unit.

(b) This subsection does not apply if the breach is failure to give notice as provided in s. 83.575.

## 83.60 Defenses to action for rent or possession; procedure.—

(1) (a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under ss. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with ss. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with ss. 83.64. The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.

(b) The defense of a material noncompliance with ss. 83.51(1) may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to ss. 83.50, a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with ss. 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with ss. 83.51(1). After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

## 83.61 Disbursement of funds in registry of court; prompt final hearing.—

When the tenant has deposited funds into the registry of the court in accordance with the provisions of ss. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

## 83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Saturdays, Sundays, and legal holidays do not stay the 24-hour notice period.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

## 83.625 Power to award possession and enter money judgment.—

In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney fees and costs.

## 83.63 Casualty damage.—

If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with ss. 83.49(3) [F.S. 1973].

## 83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to ss. 83.56(1); or

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682.

(e) The tenant has paid rent to a condominium, cooperative, or homeowners’ association after demand from the association in order to pay the landlord’s obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) “Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

**83.561 Termination of rental agreement upon foreclosure.— REPEALED**

(1) If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises subject to the rights of the tenant under this section.

(a) The tenant may remain in possession of the premises for 30 days following the date of purchaser’s delivery of a written 30-day notice of termination.

(b) The tenant is entitled to the protections of s. 83.67.

(c) The 30-day notice of termination must be in substantially the following form:

NOTICE TO TENANT OF TERMINATION

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 30 days following the date of the delivery of this notice, and that I demand possession of the premises on …(date)…. If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 30-day period for any amount that might accrue during that period. Your rent must be delivered to …(landlord’s name and address)….

(d) The 30-day notice of termination shall be delivered in the same manner as provided in s. 83.56(4).

(2) The purchaser at the foreclosure sale may apply to the court for a writ of possession based upon a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period. If the court awards a writ of possession, the writ must be served on the tenant. The writ of possession shall be governed by s. 83.62.

(3) This section does not apply if:

(a) The tenant is the mortgagor in the subject foreclosure or is the child, spouse, or parent of the mortgagor in the subject foreclosure.

(b) The tenant’s rental agreement is not the result of an arm’s length transaction.

(c) The tenant’s rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

(4) A purchaser at a foreclosure sale of a residential premises occupied by a tenant does not assume the obligations of a landlord, except as provided in paragraph (1)(b), unless or until the purchaser assumes an existing rental agreement with the tenant that has not ended or enters into a new rental agreement with the tenant.

## 83.67 Prohibited practices.—

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and one-half feet by 6 feet, in a respectful manner in or on the dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a Untied States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, recovery of possession of the dwelling unit due to the death of the last remaining tenant in accordance with s. 83.59(3)(d), or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in ss. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

## 83.681 Orders to enjoin violations of this part.—

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to ss. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to ss. 83.49 or $300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

## 83.682 Termination of rental agreement by a servicemember.--

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember’s home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember’s rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember’s Commanding Officer and a copy of the servicemember’s death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

## 83.683 Rental application by a servicemember.—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners’ association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association’s control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

# PART III SELF-SERVICE STORAGE SPACE

## 83.801 Short title.—

Sections 83.801-83.809 shall be known and may be cited as the “Self-storage Facility Act."

## 83.803 Definitions.—

As used in ss. 83.801-83.809:

(1) “Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property. No individual storage space may be used for residential purposes. A self-service storage facility is not a “warehouse" as that term is used in chapter 677. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the tenant shall be subject to the provisions of chapter 677, and the provisions of this act shall not apply.

(2) “Self-contained storage unit" means any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

(3) “Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement.

(4) “Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained unit, under a rental agreement, to the exclusion of others.

(5) “Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or use of a self-contained storage unit.

(6) “Last known address" means that address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery or certified mail in a subsequent written notice of a change of address.

## 83.805 Lien.—

The owner of a self-service storage facility or self-contained storage unit and the owner's heirs, executors, administrators, successors, and assigns have a lien upon all personal property, whether or not owned by the tenant, located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to ss. 83.801-83.809. The lien provided for in this section attaches as of the date that the personal property is brought to the self-service storage facility or as of the date the tenant takes possession of the self-contained storage unit, and the priority of this lien shall be the same as provided in ss. 83.08; however, in the event of default, the owner must give notice to persons who hold perfected security interests under the Uniform Commercial Code in which the tenant is named as the debtor.

## 83.8055 Withholding access to personal property upon nonpayment of rent.—

Upon the failure of a tenant to pay the rent when it becomes due, the owner may, without notice, after 5 days from the date the rent is due, deny the tenant access to the personal property located in the self-service storage facility or self-contained storage unit. In denying the tenant access to personal property contained in the self-contained storage unit, the owner may proceed without judicial process, if this can be done without breach of the peace, or may proceed by action.

## 83.806 Enforcement of lien.—

An owner's lien as provided in ss. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit.

(2) The notice shall include:

(a) An itemized statement of the owner's claim, showing the sum due at the time of the notice and the date when the sum became due.

(b) The same description, or a reasonably similar description, of the personal property as provided in the rental agreement.

(c) A demand for payment within a specified time not less than 14 days after delivery of the notice.

(d) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(e) The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least 15 days after the first publication.

(c) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted not fewer than 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

(5) Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner, as that term is used in s. 679.610.

(6) Before any sale or other disposition of personal property pursuant to this section, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the property to the tenant and thereafter shall have no liability to any person with respect to such personal property. If the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.

(7) A purchaser in good faith of the personal property sold to satisfy a lien provided for in s. 83.805 takes the property free of any claims, except those interests provided for in s. 83.808, despite noncompliance by the owner with the requirements of this section.

(8) In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by certified mail to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the balance.

In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by certified mail to their last known addresses. If the tenant or the secured lienholders do not claim the sale proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

(9) If the rental agreement contains a limit on the value 51 of property stored in the tenant's storage space, the limit is 52 deemed to be the maximum value of the property stored in such 53 space. 54

(10) If a lien is claimed on property that is a motor 55 vehicle or a watercraft and rent and other charges related to 56 the property remain unpaid or unsatisfied for 60 days after the 57 maturity of the obligation to pay the rent and other charges, 58 the facility or unit owner may sell the property pursuant to 59 this section or have the property towed. If a motor vehicle or 60 watercraft is towed, the facility or unit owner is not liable 61 for the motor vehicle or watercraft or any damages to the motor 62 vehicle or watercraft once a wrecker takes possession of the 63 property. The wrecker taking possession of the property must 64 comply with all notification and sale requirements provided in 65 s. 713.78.

## 83.808 Contractual liens.—

(1) Nothing in ss. [83.801](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0083/Sections/0083.801.html)-[83.809](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0083/Sections/0083.809.html) shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement nor shall it in any manner impair or affect any other lien arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. [83.805](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0083/Sections/0083.805.html).

(2) A rental agreement or an application for a rental agreement must contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).

(3) A facility or unit owner may charge a tenant a reasonable late fee for each period that he or she does not pay rent due under the rental agreement. The amount of the late fee and the conditions for imposing such fee must be stated in the rental agreement or in an addendum to such agreement. For purposes of this subsection, a late fee of $20, or 20 percent of the monthly rent, whichever is greater, is reasonable and does not constitute a penalty. In addition to late fees, a facility or unit owner may also charge a tenant a reasonable fee for any expenses incurred as a result of rent collection or lien enforcement.

## 83.809 Application of act.—

(1) Nothing in this act shall be construed as in any manner impairing or affecting the right of parties to create additional rights, duties, and obligations in and by virtue of a rental agreement. The provisions of ss. 83.801-83.809 shall be in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

(2) Chapter 82-151, Laws of Florida, shall apply to all rental agreements entered into, extended, or renewed after July 1, 1982.

## 

# Indoor Air; Smoking and Vaping

[**386.201 Popular name.**](#_Toc47090366)

[**386.202 Legislative intent.**](#_Toc47090367)

[**386.203 Definitions.**](#_Toc47090368)

[**386.204 Prohibition**](#_Toc47090369)

[**386.2045 Enclosed indoor workplaces; specific exceptions.**](#_Toc47090370)

[**386.205 Customs smoking rooms.**](#_Toc47090371)

[**386.206 Posting of signs; requiring policies.**](#_Toc47090372)

[**386.207 Administration; enforcement; civil penalties; exemptions.**](#_Toc47090373)

[**386.208 Penalties.**](#_Toc47090374)

[**386.209 Regulation of smoking preempted to state.**](#_Toc47090375)

[**386.211 Public announcements in mass transportation terminals.**](#_Toc47090376)

[**386.212 Smoking prohibited near school property; penalty.**](#_Toc47090377)

[**386.2125 Rulemaking.**](#_Toc47090378)

[Part](#_Toc47090379) II of chapter 386, Florida Statutes, entitled "INDOOR AIR: TOBACCO SMOKE," IS RENAMED "indoor air: smoking and vaping."

## 386.201 Popular name.--——

This part may be cited by the popular namethe "Florida Clean Indoor Air Act."

## 386.202 Legislative intent.——

The purpose of this part is to protect people from the health hazards of second-hand tobacco smoke and and vapor to implement the Florida health initiative in s. 20, Art. X of the State Constitution. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research or smoking or vaping cessation programs approved by the Department of Health.

## 386.203 Definitions.——

As used in this part:

(1) "Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

(2) "Common area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in a customs area of an airport terminal under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

(3) "Department" means the Department of Health.

(4) "Designated guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, vacation rentals , transient apartments, transient lodging establishments, rooming houses, boarding houses, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking or vaping may be authorized.

(5) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

(a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and

(b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in this section.

(6) "Essential services" means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations.

(7) “Membership association” means a charitable, nonprofit, or veterans’ organization that holds a current exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s. 501(d) of the Internal Revenue Code.

(8) "Physical barrier" includes an uncovered opening, a screened or otherwise partially covered opening, or an open or closed window, jalousie, or door.

(9) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.

(10) "Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

(11) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

(12) "Stand-alone bar" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derive no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.

(13) “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

(14) “Vapor” means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.

(15) “Vapor-generating electronic device” means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(16) “Vapor-generating electronic device retailer” or “retail vape shop” means any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.

(17) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.

## 386.204 Prohibition.——

A person may not smoke or vape in an enclosed indoor workplace, except as otherwise provided in s. 386.2045

## 386.2045 Enclosed indoor workplaces; specific exceptions.—

Notwithstanding s. 386.204, tobacco smoking or vaping, or both, may be authorized in each of the following places:

(1) A private residence whenever it is not being used commercially to provide child care, adult care, or health care, or any combination thereof as defined in s. 386.203(1).

(2) A retail tobacco shop.

(3) A retail vape shop.

(4) A designated guest room at a public lodging establishment.

(5) A stand-alone bar that complies with all applicable provisions of the Beverage Law and this part..

(6) An enclosed indoor workplace, to the extent that tobacco smoking or vaping is an integral part of a smoking or vaping cessation program approved by the department, or medical or scientific research conducted therein. Each room in which tobacco smoking or vaping, or both, are authorized must comply with the signage requirements in s. 386.206.

(7) A customs smoking room in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security subject to the restrictions contained in s. 386.205.

## 386.205 Customs smoking rooms.——

A customs smoking room may be designated by the person in charge of an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. A customs smoking room may be designated only in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. A customs smoking room may not be designated in an elevator, restroom, or any common area as defined by s. 386.203. Each customs smoking room must conform to the following requirements:

(1) Work, other than essential services may not be performed in the room at any time.

(2) Tobacco smoking and vaping are prohibitedwhile essential services are being performed in the room.

(3) Each customs smoking room must be enclosed by physical barriers that are impenetrable by second-hand tobacco smoke and vapor and must prevent the escape of the smoke and vapor into the enclosed indoor workplace.

(4) Each customs smoking room must exhaust tobacco smoke and vapor directly to the outside and away from air intake ducts, and be maintained under negative pressure, with respect to surrounding spaces, sufficient to contain the smoke and vapor within the room.

(5) Each customs smoking room must comply with the signage requirements in s. 386.206.

## 386.206 Posting of signs; requiring policies.——

(1) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking and vaping prohibitions established in this part. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of s. 386.204 in the enclosed indoor workplace and must include a policy which prohibits an employee from smoking or vaping, or both, in the enclosed indoor workplace. In order to increase public awareness, the person in charge of an enclosed indoor workplace may, at his or her discretion, post signs to indicate that smoking or vaping, or both, are prohibited.

(2) The person in charge of an airport terminal that includes a designated customs smoking room must conspicuously post, or cause to be posted, signs stating that smoking and vaping are prohibited except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this subsection must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

(3) The proprietor or other person in charge of an enclosed indoor workplace where a smoking or vaping cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking or vaping, or both, as applicable, are authorized for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this subsection must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

## 386.207 Administration; enforcement; civil penalties; exemptions.——

(1) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall enforce this part based upon each department’s specific areas of regulatory authority and to implement such enforcement shall adopt, in consultation with the State Fire Marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying procedures by which appeals may be taken by aggrieved parties.

(2) Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department. The State Fire Marshal shall report to the department observed violations of this part found during its periodic inspections conducted under its regulatory authority.

(3) The department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation upon notification of observed violations of this part, shall issue to the proprietor or other person in charge of such enclosed indoor workplace a notice to comply with this part If the person fails to comply within 30 days after receipt of the notice, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall assess against the person a civil penalty of not less than $250 and notmore than $750 for the first violation and not less than $500 and not to exceed $2,000 for each subsequent violation. The imposition of the fine must be in accordance with chapter 120. If a person refuses to comply with this part, after having been assessed such penalty, the Department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

(4) All fine moneys collected pursuant to this section shall be used by the department for children's medical services programs pursuant to part I of chapter 391.

## 386.208 Penalties.—

Any person who violates s. 386.204 commits a noncriminal violation as defined in s. 775.08(3), punishable by a fine of not more than $100 for the first violation and not more than $500 for each subsequent violation. Jurisdiction shall be with the appropriate county court.

## 386.209 Regulation of smoking preempted to state.——

This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject; however, school districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

## 386.211 Public announcements in mass transportation terminals.——

Announcements about the Florida Clean Indoor Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean indoor air state and that smoking and vaping are prohibited except as provided in this part.

## 386.212 Smoking and vaping prohibited near school property; penalty.——

(1) It is unlawful for any person under 18 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

(2) A law enforcement officer may issue a citation in such form as prescribed by a county or municipality to any person violating this section. Any such citation must contain:

(a) The date and time of issuance.

(b) The name and address of the person cited.

(c) The date and time the civil infraction was committed.

(d) The statute violated.

(e) The facts constituting the violation.

(f) The name and authority of the law enforcement officer.

(g) The procedure for the person to follow to pay the civil penalty, to contest the citation, or to appear in court.

(h) The applicable civil penalty if the person elects not to contest the citation.

(i) The applicable civil penalty if the person elects to contest the citation.

(3) Any person issued a citation pursuant this section shall be deemed to be charged with a civil infraction punishable by a maximum civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco or anti-vaping “alternative to suspension” program.

(4) Any person who fails to comply with the directions on the citation shall be deemed to waive his or her right to contest the citation and an order to show cause may be issued by the court.

## 386.2125 Rulemaking.—

The department and the Department of Business and Professional Regulation, may, in consultation with the State Fire Marshal, adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part within each agency’s specific areas of regulatory authority. Whenever assessing a smoking or vaping cessation program areas of regulatory authority. Whenever assessing a smoking or vaping cessation program for approval, the department shall consider whether the smoking or vaping cessation program limits, to the extent possible, any potential for exposure to secondhand tobacco smoke or vapor for nonparticipants in the enclosed indoor workplace.

# Elevators

[**399.001 Short Title and Purpose.**](#ShortTitle_399)

## [399.01 Definitions.](#_399.01_Definitions.)

## [399.02 General requirements.](#_399.02_General_requirements.)

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## 

## 399.001 Short title and purpose.——

This chapter may be cited as the “Elevator Safety Act.” The purpose of this chapter is to provide for the safety of life and limb and to promote public safety awareness. The use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury and exposes employees and the public to unsafe conditions. The prevention of these injuries and the protection of employees and the public from unsafe conditions is in the best interest of the public. Elevator personnel performing work covered by the Florida Building Code must possess documented training or experience or both and be familiar with the operation and safety functions of the components and equipment. Training and experience includes, but is not limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with the requirements of the Florida Building Code. This chapter establishes the minimum standards for elevator personnel.

## 399.01 Definitions.——

As used in this chapter, the term:

(1) "Alteration" means any change or addition to the vertical conveyance other than maintenance, repair, or replacement.

(2) "Certificate of operation" means a document issued by the department which indicates that the conveyance has had the required safety inspection and tests and that fees have been paid as provided in this chapter.

(3) “Conveyance” means an elevator, dumbwaiter, escalator, moving sidewalk, platform lift, or stairway chairlift.

(4) “Department” means the Department of Business and Professional Regulation.

(5) "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(6) "Elevator" means one of the following mechanical devices:

(a) A hoisting and lowering mechanism, equipped with a car and platform that moves in guide rails and serves two or more landings to transport material or passengers or both.

(b) An escalator, which is a power-driven, inclined continuous stairway used for raising or lowering passengers.

(c) A dumbwaiter, which is a hoisting and lowering mechanism equipped with a car of limited size which moves in guide rails and serves two or more landings.

(d) A moving walk, which is a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

(e) An inclined stairway chairlift, which is a device used to transport physically handicapped persons over architectural barriers.

(f) An inclined or vertical wheelchair lift, which is a device used to transport wheelchair handicapped persons over architectural barriers.

(7) “Existing installation” means an installation defined as an “installation, existing” in the Florida Building Code.

(8) “Elevator Safety Technical Advisory Committee” means the committee appointed by the secretary of the Department of Business and Professional Regulation.

(9) “Private residence” means a separate dwelling or a separate apartment in a multiple dwelling which is occupied by members of a single-family unit.

(10) "Service maintenance contract" means a contract that provides for routine examination, lubrication, cleaning, adjustment, replacement of parts, and performance of applicable code-required safety tests such as on a traction elevator and annual relief pressure test on a hydraulic elevator and any other service, repair, and maintenance sufficient to ensure the safe operation of the elevator. A service maintenance contract shall be made available upon request of the department for purposes of oversight and monitoring.

(11) “Temporary operation inspection” means an inspection performed by a certified elevator inspector, the successful passage of which permits the temporary use of a noncompliant vertical conveyance as provided by rule.

(12) “Registered elevator company” means an entity registered with and authorized by the division employing persons to construct, install, inspect, maintain, or repair any vertical conveyance. Each registered elevator company must annually register with the division and maintain general liability insurance coverage in the minimum amounts set by rule.

(13) “Certified elevator inspector” is a natural person registered with and authorized by the division to construct, install, inspect, maintain, or repair any vertical conveyance, after having properly acquired the qualified elevator inspector credential as prescribed by the American Society of Mechanical Engineers.

(14) “Certified elevator technician” means a natural person authorized by the division to construct, install, maintain, or repair any vertical conveyance, after having been issued an elevator certificate of competency by the division. Each certified elevator technician must annually register with the division and be covered by general liability insurance coverage in the minimum amounts set by the division.

(15) “Elevator helper” means a natural person performing work under the direct supervision of an elevator certificate of competency holder to construct, install, maintain, or repair any vertical conveyance.

(16) “Elevator certificate of competency” means a credential issued by the division to any individual natural person successfully completing an examination as prescribed by rule and paying a nonrefundable fee of $50. Such credential shall be valid for and expire at the end of 1 year, and may be renewed by the division when the division receives proof of the elevator certificate of competency holder’s completion of 8 hours of continuing education from a provider approved by the department and a nonrefundable renewal fee of $50. The department shall adopt by rule criteria for providing approval and procedures for continuing education reporting.

(a) An elevator certificate of competency may be issued only if the applicant meets the following requirements:

1. Four years' work experience in the construction, maintenance, service, and repair of conveyances covered by this chapter. This experience shall be verified by current or previously registered elevator companies as required by the division.

2. One of the following:

a. Proof of completion and successful passage of a written examination administered by the division or a provider approved by the division under standards it adopted by rule.

b. Proof of completion of an apprenticeship program for elevator mechanics which has standards substantially equivalent to those found in a national training program for elevator mechanics and is registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship authority.

c. Proof of licensure or certification by a state or local jurisdiction in the United States having standards substantially equal to or more stringent than those of this chapter.

(b) A licensed mechanical engineer whose license is in good standing may be granted an elevator certificate of competency. All other building transportation terms are defined in the current Florida Building Code.

## 399.02 General requirements.——

(1) The Elevator Safety Technical Advisory Committee shall develop and submit to the Director of Hotels and Restaurants proposed revisions to the elevator safety code so that it is the same as or similar to the latest editions of ASME A17.1, ASME A17.3, and ASME A18.1.

(2) This chapter covers the design, construction, operation, inspection, testing, maintenance, alteration, and repair of the following equipment and its associated parts and hoistways:

(a) Hoisting and lowering mechanisms equipped with a car or platform which move between two or more landings. This equipment includes, but is not limited to, elevators, platform lifts, and stairway chairlifts.

(b) Power-driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, escalators and moving walks.

(c) Hoisting and lowering mechanisms equipped with a car which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes, but is not limited to, dumbwaiters, material lifts, and dumbwaiters with automatic-transfer devices.

(3) Equipment not covered by this chapter includes, but is not limited to:

(a) Personnel hoists and material hoists within the scope of ASME A10, as adopted by the Florida Building Code.

(b) Man lifts within the scope of ASME A90.1, as adopted by the Florida Building Code.

(c) Mobile scaffolds, towers, and platforms within the scope of ANSI A92, as adopted by the Florida Building Code.

(d) Powered platforms and equipment for exterior and interior maintenance within the scope of ASME A120.1, as adopted by the Florida Building Code.

(e) Conveyors and related equipment within the scope of ASME B20.1, as adopted by the Florida Building Code.

(f) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of ASME B30, as adopted by the Florida Building Code.

(g) Industrial trucks within the scope of ASME B56, as adopted by the Florida Building Code.

(h) Portable equipment, except for portable escalators that are covered by the Florida Building Code.

(i) Tiered or piling machines used to move materials to and from storage located and operating entirely within one story.

(j) Equipment for feeding or positioning materials at machine tools and printing presses.

(k) Skip or furnace hoists.

(l) Wharf ramps.

(m) Railroad car lifts or dumpers.

(n) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator by a contractor licensed in this state.

(o) Automated people movers at airports.

(p) Elevators in television and radio towers.

(q) Hand-operated dumbwaiters.

(r) Sewage pump station lifts.

(s) Automobile parking lifts.

(t) Equipment covered in s. 1.1.2 of the Elevator Safety Code.

(u) Elevators, inclined stairway chairlifts, and inclined or vertical wheelchair lifts located in private residences.

(4) Each elevator shall have a serial number assigned by the department painted on or attached to the elevator car in plain view and also to the driving mechanism. This serial number shall be shown on all required certificates and permits.

(5) (a) The construction permitholder is responsible for the correction of violations and deficiencies until the elevator has been inspected and a certificate of operation has been issued by the department. The construction permitholder is responsible for all tests of new and altered equipment until the elevator has been inspected and a certificate of operation has been issued by the department.

(b) The elevator owner is responsible for the safe operation, proper maintenance, and inspection and correction of code deficiencies of the elevator after a certificate of operation has been issued by the department. The responsibilities of the elevator owner may be assigned by lease.

(6) (a) The department is empowered to carry out all of the provisions of this chapter relating to the inspection and regulation of elevators and to enforce the provisions of the Florida Building Code.

(b) In order to perform its duties and responsibilities under this section, the division may enter and have reasonable access to all buildings and rooms or spaces in which an existing or newly installed conveyance and equipment are located.

(7) The Elevator Safety Technical Advisory Committee shall annually review the provisions of the Safety code for Elevators and Escalators ASME A17.1, ASME A18.1, or other related model codes and amendments thereto, concurrent with the update of the Florida Building Code and recommend to the Florida Building Commission revisions to the Florida Building Code to maintain the protection of the public health, safety and welfare.

(8) The division may grant variances for undue hardship pursuant to s.120.542 and the rules adopted under this section. Such rules must include a process for requests for variances. The division may not grant a request for a variance unless it finds that the variance will not adversely affect the safety of the public.

(9) A17.3, which require Phase II Firefighters’ Service on elevators may not be enforced until the elevator is replaced or requires major modification, on elevators in condominiums or multifamily residential buildings, including those that are part of a continuing care facility licensed under chapter 651, or similar retirement community with apartments, having a certificate of occupancy by the local building authority that was issued before July 1, 2008. This exception does not prevent an elevator owner from requesting a variance from the applicable codes. This subsection does not prohibit the division from granting variances pursuant to s. 120.542 and subsection (8). The division shall adopt rules to administer this subsection.

## 399.03 Design, installation, and alteration of conveyances.——

(1) A conveyance covered by this chapter may not be erected, constructed, installed, or altered within buildings or structures until a permit has been obtained from the department. Permits must be applied for by a registered elevator company and may only be granted upon receipt and approval of an application to be made on a form prescribed by the department, accompanied by proper fees and a sworn statement from an agent of the registered elevator company that the plans meet all applicable elevator safety and building codes. Permits may be granted only to registered elevator companies in good standing. When any material alteration is made, the alteration must conform to applicable requirements of the Florida Building Code and the provisions of this chapter A copy of the permit and plans must be kept at the construction site at all times while the work is in progress and until a certificate of operation is issued. A permit shall not be required for construction or repair of elevators in seeking to attain compliance with emergency elevator access requirements. Elevator owners shall forward to the department, in an electronic format approved by the department, an emergency access notification that compliance measures are either not required or are being implemented. The emergency access notification must also contain specific compliance information, including the current compliance status, specific measures required to attain compliance, and certification by a state-certified inspector. Fees may not be assessed for the filing of the emergency access notification. The department shall maintain an emergency elevator access registry that is available to the State Fire Marshal of the Department of Financial Services for enforcement purposes. The Department of Business and Professional Regulation shall adopt rules to administer this section.

(2) The department shall provide by rule for permit application requirements and permit fees.

(3) Permits may be revoked for the following reasons:

(a) There are any false statements or misrepresentations as to the material facts in the application, plans, or specifications on which the permit was based.

(b) The permit was issued in error and not in accordance with the code or rules.

(c) The work detailed under the permit is not being performed in accordance with the provisions of the application, plans, or specifications or with the code or conditions of the permit.

(d) The construction permitholder to whom the permit was issued fails or refuses to comply with a stop-work order.

(4) A permit expires if:

(a) The work authorized by the permit is not commenced within 6 months after the date of issuance, or within a shorter period of time as the department may specify at the time the permit is issued.

(b) The work is suspended or abandoned for a period of 60 days, or such shorter period of time as the department may specify at the time the permit is issued, after the work has been started. For good cause, the department may allow a discretionary extension for the foregoing period.

(5) All new conveyance installations must be performed by a registered elevator company. Before any vertical conveyance is used, except those in a private residence, it must be inspected by a certified elevator inspector not employed, associated, or having a conflict of interest with the elevator construction permitholder or elevator owner and certified as meeting the safety provisions of the Florida Building Code, including the performance of all required safety tests. The certified elevator inspector shall provide the original copy of the inspection report to the department within 5 days after the inspection. A certificate of operation may not be issued until the permitholder provides an affidavit signed by the construction supervisor attesting that the supervisor directly supervised the construction or installation of the elevator vertical conveyances, including stairway chairlifts, and inclined or vertical wheelchair lifts located in private residences are not required to obtain a certificate of operation under this chapter.

(6) At the department’s request, and to facilitate oversight and monitoring, the permitholder shall notify the department of the scheduled final inspection date and time for purposes of acquiring a certificate of inspection.

(7) Each elevator shall comply with the edition of the Florida Building Code or Elevator Safety Code that was in effect at the time of receipt of application for the construction permit for the elevator.

(8) Each alteration to, or relocation of, an elevator shall comply with the edition of the Florida Building Code or Elevator Safety Code that was in effect at the time of receipt of the application for the construction permit for the alteration or relocation.

(9) When any change is made in the classification of an elevator, the elevator shall comply with all of the requirements of the version of the Florida Building Code or Elevator Safety Code that were in effect at the time of receipt of the application for the construction permit for the change in classification.

(10) (a) The temporary use of an elevator during installation or alteration is authorized for a period of 30 days after the completion of a satisfactory temporary operation inspection. An additional 30-day period of temporary use is authorized from the date of completion of each additional satisfactory temporary operation inspection. A satisfactory temporary operation inspection must satisfy the following criteria: the elevator is tested under contract load; the hoistway is fully enclosed; the hoistway doors and interlocks are installed; the car is completely enclosed, including door or gate and top; all electrical safety devices are installed and properly functioning; and terminal stopping equipment is in place for a safe runby and proper clearance. When a car is provided with a temporary enclosure, the operating means must be by constant pressure push-button or lever-type switch. The car may not exceed the minimum safe operating speed of the elevator, and the governor tripping speed must be set in accordance with the operating speed of the elevator.

(b) Temporary use is authorized only when a satisfactory temporary operation inspection report, completed within the last 30 days by a certified elevator inspector, and a notice prescribed by the department, bearing a statement that the elevator has not been finally approved by a certified elevator inspector, are conspicuously posted in the elevator.

**399.031 Clearance requirements between elevator doors for elevators inside a private residence.—**

(1) This section may be cited as the “Maxwell Erik ‘Max’ Grablin Act.”

(2) For elevators installed in a private residence:

(a) The distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill may not exceed 3/4 inch for swinging doors and 21/4 inches for sliding doors.

(b) 1. Horizontal sliding car doors and gates shall be designed and installed to withstand a force of 75 pounds applied horizontally on an area 4 inches by 4 inches at right angles to and at any location on the car door without permanent deformation. The deflection may not exceed 3/4 inch and may not displace the door from its guides or tracks. The force must be applied while the door is in the fully closed position.

2. Folding car doors shall be designed and installed to withstand a force of 75 pounds applied horizontally using a 4-inch-diameter sphere at any location within the folds on the car door without permanent deformation. The deflection may not exceed 3/4 inch and may not displace the door from its guides or tracks. The force must be applied while the door is in the fully closed position.

(c) The distance between the hoistway face of the landing door and the hoistway face of the car door or gate shall conform to one of the following:

1. If a power-operated horizontally sliding hoistway and car doors are used, the measurement between the leading edge of the doors or sight guard, if provided, may not exceed 4 inches. If it is possible for a user to detach or disconnect either door from the operator and such detachment or disconnection allows the user to operate the door manually, the requirement in subparagraph 5. applies.

2. If swinging hoistway doors and folding car doors are used and both doors are in the fully closed position, the space between the hoistway door and the folding door must reject a 4-inch-diameter sphere at all points.

3. If swinging hoistway doors and car gates are used, the space between the hoistway door and the car gate must reject a 4-inch-diameter sphere at all points.

4. If the car doors are powered and arranged so that they cannot be closed until after the hoistway door is closed, and the car doors automatically open when the car is at a landing and the hoistway door is opened, the measurement between the hoistway face of the hoistway door and the hoistway face of the car door at its leading edge may not exceed 4 inches. If it is possible for a user to detach or disconnect either door from the operator and such detachment or disconnection allows the user to operate the door manually, the requirement in subparagraph 5. applies.

5. If swinging or horizontally sliding hoistway doors and manual horizontally sliding car doors are used and both doors are in the fully closed position, the space between the swinging or horizontally sliding hoistway door and the manual horizontally sliding car doors must reject a 4-inch-diameter sphere at all points.

(3) During normal operation, the elevator controller must monitor the closed and locked contacts of the hoistway door locking device, whether electrical or mechanical. If the closed and locked contacts of the landing locks are open while the car is not in the unlocking zone for the hoistway door locking device, the elevator controller must interrupt power to the motor and brake and must not allow the elevator car to restart until the owner or the owner’s agent, with a master elevator key, has checked for obstructions above and below the elevator car, returned the hoistway door locking device contacts to the normal operating position, and manually reset the elevator controller with the master elevator key. Additionally, a visual indicator must be visible at all landings until the hoistway door locking device has been returned to the normal operating position and the elevator controller has been manually reset The underside of the platform of an elevator car shall be equipped with a device

(4) This section applies to all new elevators in a private residence.

Section 2. The Florida Building Commission shall, by October 1, 2017, adopt into the Florida Building Code pursuant to s. 553.73(8), Florida Statutes:

(1) A provision authorizing the permanent installation of a nonremovable, hoistway door space guard in order to comply with section R321.4.1(c) 2-5 of the Florida Building Code, 5th Edition (2014) Residential. The door space guard must be designed and installed to withstand a force of 75 pounds applied horizontally using a 4-inch-diameter sphere at any location within the folds on the car door without permanent deformation.

(2) Section 399.031, Florida Statutes, relating to clearance requirements between elevator doors for elevators inside a private residence.

## 399.035 Elevator accessibility requirements for the physically handicapped.—

(1) Each elevator, the installation of which is begun after October 1, 1990, must be made accessible to physically handicapped persons with the following requirements:

(a) In a building having any elevators that do not provide access to every floor level, elevator hallway call buttons on all main levels of ingress and on any floor that is commonly served by more than one group of elevators must be marked with Arabic and braille symbols that indicate floor levels to which access is provided. The symbols must be placed directly above each call button.

(b) Each elevator car interior must have a support rail on at least one wall. All support rails must be smooth and have no sharp edges and must not be more than 1 1/2 inches thick or 2 1/2 inches in diameter. Support rails must be continuous and a minimum length of 42 inches overall. The inside surface of support rails must be 1 1/2 inches clear of the car wall. The distance from the top of the support rail to the finished car floor must be at least 31 inches and not more than 33 inches. Padded or tufted material or decorative materials such as wallpaper, vinyl, cloth, or the like may not be used on support rails.

(c) Each elevator covered by this section must be available to be used at any time to assist the physically handicapped in an emergency evacuation. The requirements of the latest revision of Section 2.27 of the American Society of Mechanical Engineers Standard ASME A17.1 must be complied with to meet the requirements of this paragraph.

(d) Interior surface of car enclosures must be of fire-resistive material, and walls must be surfaced with nonabrasive material. All materials exposed to the car interior must conform to the standards of the Elevator Safety Code.

(e) A bench or seat may be installed on the rear wall of the elevator car enclosure, if the bench or seat does not protrude beyond the vertical plane of the elevator car enclosure wall when folded into a recess provided for the bench or seat and, when not in use, the bench or seat automatically folds into the recess. The bench or seat must be capable of supporting a live load of at least 250 pounds on any 12-inch by 12-inch area. A padded, tufted, or other decorative material may not be used to cover the bench or seat; nor may the bench or seat encroach on the minimum clear-inside-car dimensions specified in this section.

(2) Any building that is more than three stories high or in which the vertical distance between the bottom terminal landing and the top terminal landing exceeds 25 feet must be constructed to contain at least one passenger elevator that is operational and will accommodate an ambulance stretcher 76 inches long and 24 inches wide in the horizontal position.

(3) This section applies only to elevators available for the transportation of the public. This section does not apply to elevators restricted by key or similar device to a limited number of persons in a building that has an elevator that otherwise meets the requirements of this section or to elevators used only for the transportation of freight. However, elevators that are used as freight and passenger elevators for the public and employees must comply with this section. This section does not apply to dumbwaiters or escalators.

(4) This section supersedes all other state laws and regulations and local ordinances and rules affecting the accessibility of passenger elevators to the physically handicapped, and the standards established by this section may not be modified by municipal or county ordinance.

## 399.049 Disciplinary action. ——

(1) The department may suspend or revoke an elevator inspector certification, an elevator company registration, an elevator certificate of competency, or an elevator certificate of operation issued under this chapter or impose an administrative penalty of up to $1,000 per violation upon any registered elevator company or certificateholder who commits any one or more of the following violations:

(a) Any false statement as to a material matter in an application for registration, certification, or any permit or certificate issued under this chapter.

(b) Fraud, misrepresentation, or bribery in the practice of the profession.

(c) Failure by a certified elevator inspector to provide the department and the certificate of operation holder with a copy of the inspection report within 5 days after the date of any inspection performed after the initial certificate of operation is issued.

(d) Violation of any provision of this chapter.

(e) Failure by a certified elevator inspector to maintain his or her qualified elevator inspector credential in good standing.

(f) Having a license to install, inspect, maintain, or repair any vertical conveyance revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or county.

(g) Engaging in fraud or deceit, negligence, incompetency, or misconduct in the practice of the profession.

(2) Any disciplinary action taken under this chapter must comply with chapter 120 and any rules adopted thereunder.

## 399.061 Inspections; service maintenance contracts; correction of deficiencies.—

(1) (a) All elevators or other conveyances subject to this chapter must be annually inspected by a certified elevator inspector, or by a municipality or county under contract with the division pursuant to s. 399.13. If the elevator is not an escalator or a dumbwaiter, serves only two adjacent floors, and is covered by a service maintenance contract, an inspection is not required so long as the service contract remains in effect.

(b) A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division and as prescribed by rule. Cancellation of a service maintenance contract must be reported to the division as prescribed by rule. .

(2) The division may employ state elevator inspectors to inspect an elevator whenever necessary to ensure its safe operation. The division may also employ state elevator inspectors to conduct any inspections required by this chapter and may charge a fee for each inspection in an amount sufficient to cover the costs of that inspection, as provided by rule, when a private certified elevator inspector is not available. Each state elevator inspector shall be properly qualified as a certified elevator inspector.

(3) Whenever the division determines from the results of any inspection that, in the interest of the public safety, an elevator is in an unsafe condition, the division may seal the elevator or order the discontinuance of the use of the elevator until the division determines by inspection that such elevator has been satisfactorily repaired or replaced so that the elevator may be operated in a safe manner.

(4) When the division determines that an elevator is in violation of this chapter or the Florida Building Code, the division may issue an order to the elevator owner requiring correction of the violation and reinspections of the elevator evidencing the correction.

(5) A certified elevator inspector or registered elevator company shall, upon the written request of the department, provide a written response that explains the inspection procedures and applications used to prepare an inspection report that was found by the department to contain errors or omissions of code violations or tests.

## 399.07 Certificates of operation; fees.——

(1) The certificate of operation is valid for a period not to exceed 2 years and shall expire at the end of the period unless revoked. The department may adopt rules establishing a procedure for certificate renewal. Certificates of operation may be renewed only for vertical conveyances having a current satisfactory inspection. The owner of an elevator operating with an expired certificate of operation is in violation of this chapter. Certificate of operation renewal applications received by the department after the date of expiration of the last current certificate must be accompanied by a late fee of $50 in addition to the renewal fee and any other fees required by law. The department shall adopt by rule a fee schedule for the renewal of certificates of operation. The fees must be deposited into the Hotel and Restaurant Trust Fund.

(2) The certificate of operation must be posted in a conspicuous location on the elevator and must be framed with a transparent cover.

(3) The certificate of operation shall contain the text of s. 823.12, relating to the prohibition against smoking in elevators.

(4) In addition to subsection (3), the designation "NO SMOKING" along with the international symbol for no smoking shall be conspicuously displayed within the interior of the elevator in the plain view of the public.

(5) Except for temporary use authorized by this chapter, the operation or use of any newly installed, relocated, or altered elevator is prohibited until the elevator has passed the tests and inspections required by this chapter and a certificate of operation has been issued.

(6) The department may suspend any certificate of operation if it finds that the elevator is not in compliance with this chapter or of rules adopted under this chapter. The suspension remains in effect until the department receives satisfactory results of an inspection performed by a certified elevator inspector indicating that the elevator has been brought into compliance.

## 399.10 Enforcement of law.——

It shall be the duty of the department to enforce the provisions of this chapter. The department shall have rulemaking authority to carry out the provisions of this chapter.

## 399.105 Administrative fines.——

(1) Any person who fails to comply with the reporting requirements of this chapter or with the reasonable requests of the department to determine whether the provisions of a service maintenance contract and its implementation ensure safe elevator operation is subject to an administrative fine not greater than $1,000 in addition to any other penalty provided by law.

(2) Any person who commences the operation, installation, relocation, or alteration of any elevator for which a permit or certificate is required by this chapter without having obtained from the department the permit or certificate is subject to an administrative fine not greater than $1,000 in addition to any other penalty provided by law.

(3) An elevator owner who continues to operate an elevator after notice to discontinue its use or after it has been sealed by the department is subject to an administrative fine not greater than $1,000 for each day the elevator has been operated after the service of the notice or sealing by the department, in addition to any other penalty provided by law.

(4) An elevator owner who fails to comply with an order to correct issued under s. 399.061(4) within 90 days after its issuance is subject, in addition to any other penalty provided by law, to an administrative fine in an amount not to exceed $1,000.

(5) All administrative fines collected shall be deposited into the Hotel and Restaurant Trust Fund.

## 399.1061  Elevator Safety Technical Advisory Council.--

(1) The Elevator Safety Technical Advisory Council is created within the division and shall consist of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service. The council shall provide technical assistance to the division in support of protecting the health, safety, and welfare of the public and shall give the division the benefit of the council members' knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division.

(2) (a)The council members shall serve 4-year terms, except that to provide for staggered terms four of the initial appointees, as specified by rule, shall serve 2-year terms. All subsequent appointments shall be for 4-year terms. The council shall appoint one of the members to serve as chair.

(b)The council members shall serve without compensation, except that the members may be reimbursed for per diem and travel expenses as provided in s. 112.061.

(3) The council may consult with engineering authorities and organizations concerned with standard safety codes for recommendations to the department regarding rules for the operation, maintenance, servicing, construction, alteration, installation, or inspection of vertical conveyances subject to this chapter.

## 399.11  Penalties.--

(1)  Any person who violates any of the provisions of this chapter or the rules of the department is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)  Any person who falsely represents himself or herself as credentialed under this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## 399.125 Reporting of elevator accidents; penalties.—

Within 5 working days after any accident occurring in or upon any elevator, the certificate of operation holder shall report the accident to the division on a form prescribed by the division. Failure to timely file this report is a violation of this chapter and will subject the certificate of operation holder to an administrative fine, to be imposed by the division, in an amount not to exceed $1,000.

## 399.13 Delegation of authority to municipalities or counties.—

(1) The department may enter into contracts with municipalities or counties under which the municipalities or counties will issue construction permits and certificates of operation; will provide for inspection of elevators, including temporary operation inspections; and will enforce the applicable provisions of the Florida Building Code, as required by this chapter. The municipality or county may choose to require inspections be performed by its own inspectors or by private certified elevator inspectors. The municipality or county may assess a reasonable fee for inspections performed by its inspectors. Each agreement shall include a provision that the municipality or county shall maintain for inspection by the department copies of all applications for permits issued, a copy of each inspection report issued, and proper records showing the number of certificates of operation issued; shall include a provision that each required inspection be conducted by a certified elevator inspector; and may include other provisions as the department deems necessary. The county shall enforce the Florida Building Code as it applies to this chapter and may impose fees and assess and collect fines as part of its enforcement activities. A county or municipality may not issue or take disciplinary action against a certificate of competency, an elevator inspector certification, an elevator technician certification, or an elevator company registration. However, the department may initiate disciplinary action against a registration or certification at the request of a county or municipality.

(2) The department may make inspections of elevators in the municipality or county for the purpose of determining that the provisions of this chapter are being met and may cancel the contract with any municipality or county that the department finds has failed to comply with the contract or this chapter. The amendments to chapter 399 by this act shall apply only to the installation, relocation, or alteration of an elevator for which a permit has been issued after October 1, 1990.

## 399.15 Regional emergency elevator access.—

(1) In order to provide emergency access to elevators:

(a) For each building in this state which is six or more stories in height, including, but not limited to, hotels and condominiums, on which a building permit is issued after September 30, 2006, all of the keys for elevators that allow public access, including, but not limited to, service and freight elevators, must be keyed so as to allow all elevators within each of the seven state emergency response regions to operate in fire emergency situations with one master elevator key.

(b) Any building in this state which is six or more stories in height and has undergone "substantial improvement" as defined in section 161.54(12), Florida Statutes, must also comply with paragraph (a).

(2) Each existing building in this state which is six or more stories in height must comply with subsection (1) before October 1, 2009.

(3) In addition to elevator owners, owners' agents, elevator contractors, state-certified inspectors, and state agency representatives, master elevator keys may be issued only to the fire department and may not be issued to any other emergency response agency. A person may not duplicate a master elevator key for issuance to, or issue such a key to, anyone other than authorized fire department personnel. Each master elevator key must be marked "DO NOT DUPLICATE."

(4) If it is technically, financially, or physically impossible to bring a building into compliance with this section, the local fire marshal may allow substitute emergency measures that will provide reasonable emergency elevator access. The local fire marshal's decision regarding substitute measures may be appealed to the State Fire Marshal.

(5) The Division of State Fire Marshal of the Department of Financial Services shall enforce this section. Any person who fails to comply with the requirements of this section is subject to an administrative fine of not more than $1,000, in addition to any other penalty provided by law. All administrative fines shall be deposited into the Insurance Regulatory Trust Fund.

(6) Builders should make every effort to use new technology and developments in keying systems which make it possible to convert existing equipment so as to provide efficient regional emergency elevator access.

(7) As an alternative to complying with the requirements of subsection (1), each building in this state which is required to meet the provisions of subsections (1) and (2) may instead provide for the installation of a uniform lock box that contains the keys to all elevators in the building allowing public access, including service and freight elevators. The uniform lock box must be keyed to allow all uniform lock boxes in each of the seven state emergency response regions to operate in fire emergency situations using one master key. The master key for the uniform lock shall be issued in accordance with subsection (3). The Division of State Fire Marshal of the Department of Financial Services shall enforce this subsection.

(8) The Department of Financial Services shall adopt rules to implement this section, including rules to determine the master elevator key to be used within each of the emergency response regions.

## 399.16 Unlicensed activity; citations; prohibitions; penalties.—

(1) The division may issue a citation for unlicensed activity upon a finding of probable cause that activity requiring a permit, certificate, or license is being performed without a valid permit, certificate, or license. The citation constitutes a stop work order that may be enforced by the division.

(a) The citation shall be in a form prescribed by rule. The division may adopt rules to administer this section, including a schedule of penalties.

(b) The division shall issue a citation to the owner of an unlicensed elevator, to unlicensed elevator personnel, or to the owner of an unregistered elevator company.

(c) The activity for which a citation is issued shall cease upon receipt of the citation and the person who receives the citation must correct the violation and respond to the civil penalty, which may not exceed $1,000 per violation, or request an administrative hearing pursuant to chapter 120.

(2) Each day that a violation continues constitutes a separate violation.

(3) The remedies in this section are not exclusive and may be imposed in addition to other remedies in this chapter.

## 399.17 Certified elevator inspectors; registration.—

Each certified elevator inspector must annually register with the division and provide proof of completion of 8 hours of continuing education, proof of good standing, and proof of general liability insurance coverage in the minimum amounts established by the division. The registration must remain in good standing throughout the license year.

## 

# COMMUNITY ASSOCIATION MANAGEMENT

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**[(See Also 61.20, Florida Administrative Code)](#_Community_Association_Management)**

## 468.431 Definitions.——As used in this part

(1) "Community association" means a residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

(2) "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association’s governing documents and the requirements of law as necessary to perform such practices. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

(3) “Community association management firm” means a corporation, limited liability company, partnership, trust, association, sole proprietor­ship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services described in subsection (2)

(4) "Community association manager" means a natural person who is licensed pursuant to this part to perform community association management services.

(5) “Council” means the Regulatory Council of Community Association Managers.

(6) "Department" means the Department of Business and Professional Regulation.

## 

## 468.4315 Regulatory Council of Community Association Managers .——

[(See Also 61-20, Florida Administrative Code)](#_PART_I_CAM)

(1) The Regulatory Council of Community Association Managers is created within the department and shall consist of seven members appointed by the Governor and confirmed by the Senate.

(a) Five members of the council shall be licensed community association managers, one of whom may be a community association manager employed by a timeshare managing entity as described in ss. 468.438 and 721.13, who have held an active license for at least 5 years. The remaining two council members shall be residents of this state, must not be or ever have been connected with the business of community association management, and shall not be prohibited from serving because the member is or has been a resident or board member of a community association.

(b) The Governor shall appoint members for terms of 4 years. Such members shall serve until their successors are appointed. Members’ service on the council shall begin upon appointment and shall continue until their successors are appointed.

(2) The council may adopt rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the department in carrying out the duties and authorities conferred upon the department by this part.

(3) To the extent the council is authorized to exercise functions otherwise exercised by a board pursuant to chapter 455, the provisions of chapter 455 and s. 20.165 relating to regulatory boards shall apply, including, but not limited to, provisions relating to board rules and the accountability and liability of board members. All proceedings and actions of the council are subject to the provisions of chapter 120. In addition, the provisions of chapter 455 and s. 20.165 shall apply to the department in carrying out the duties and authorities conferred upon the department by this part.

(4) The council may establish a public education program relating to professional community association management.

(5) Members of the council shall serve without compensation but are entitled to receive per diem and travel expenses pursuant to s. 112.061 while carrying out business approved by the council.

(6) The responsibilities of the council shall include, but not be limited to:

(a) Receiving input regarding issues of concern with respect to commu­nity association management and recommendations for changes in applica­ble laws.

(b) Reviewing, evaluating, and advising the division concerning revisions and adoption of rules affecting community association management.

(c) Recommending improvements, if needed, in the education programs offered by the division.

## 468.432 Licensure of community association managers and community association management firms; exceptions.——

(1) A person desiring to be licensed as a community association manager shall apply to the department to take the licensure examination. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, which set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The cost of processing shall be borne by the applicant.

(2) A community association management firm or other similar organization responsible for the management of more than 10 units or a budget of $100,000 or greater shall not engage or hold itself out to the public as being able to engage in the business of community associa­tion management in this state unless it is licensed by the department as a community association management firm in accordance with the provisions of this part.

(a) A community association management firm or other similar organiza­tion desiring to be licensed as a community association management firm shall apply to the department on a form approved by the department to­gether with the application and licensure fees required by s. 468.435(1)(a) and (c). Each community association management firm applying for licen­sure under this subsection must be actively registered and authorized to do business in this state.

(b) Each applicant shall designate on its application a licensed commu­nity association manager who shall be required to respond to all inquiries from and investigations by the department or division.

(c) Each licensed community association management firm shall notify the department within 30 days after any change of information contained in the application upon which licensure is based.

(d) Community association management firm licenses shall expire on September 30 of odd-numbered years and shall be renewed every 2 years. An application for renewal shall be accompanied by the renewal fee as required by s. 468.435(1)(d).

(e) The department shall license each applicant whom the department certifies as meeting the requirements of this subsection.

(f) If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.

(g) Any community association management firm or other similar orga­nization agrees by being licensed that it will employ only licensed persons in the direct provision of community association management services as described in s. 468.431(3).

## 468.433 Licensure by examination.——

(1) A person desiring to be licensed as a community association manager shall apply to the department to take the licensure examination. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, which set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The cost of processing shall be borne by the applicant.

(2) The department shall examine each applicant who is at least 18 years of age, who has successfully completed all prelicensure education requirements, and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager;

2. The finding by the department of lack of good moral character is supported by clear and convincing evidence; or

3. The applicant is found to have provided management services requir­ing licensure without the requisite license.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department shall furnish the applicant a statement containing its findings, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(d) The council shall establish by rule the required amount of prelicensure education, which shall consist of not more than 24 hours of in-person instruction by a department-approved provider and which shall cover all areas of the examination specified in subsection (3). Such instruction shall be completed within 12 months prior to the date of the examination. Prelicensure education providers shall be considered continuing education providers for purposes of establishing provider approval fees. A licensee shall not be required to comply with the continuing education requirements of s. 468.4337 prior to the first license renewal. The department shall, by rule, set standards for exceptions to the requirement of in-person instruction in cases of hardship or disability.

(3) The council shall approve an examination for licensure. The examination must demonstrate that the applicant has a fundamental knowledge of state and federal laws relating to the operation of all types of community associations and state laws relating to corporations and nonprofit corporations, proper preparation of community association budgets, proper procedures for noticing and conducting community association meetings, insurance matters relating to community associations, and management skills.

(4) The department shall issue a license to practice in this state as a community association manager to any qualified applicant who successfully completes the examination in accordance with this section and pays the appropriate fee.

## 468.4334 Professional practice standards; liability.—

(1) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees. "

(2) (a) A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm’s act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

(b) Indemnification under paragraph (a) may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

## 468.435 Fees; establishment; disposition.——

(1) The council shall, establish fees for the described purposes and within the ranges specified in this section:

(a) Application fee: not less than $25, or more than $50.

(b) Examination fee: not less than $25, or more than $100.

(c) Initial license fee: not less than $25, or more than $100.

(d) Renewal of license fee: not less than $25, or more than $100.

(e) Delinquent license fee: not less than $25, or more than $50.

(f) Inactive license fee: not less than $10, or more than $25.

(2) Until the council establishes fees under subsection (1), the lower amount in each range shall apply.

(3) Fees collected under this section shall be deposited to the credit of the Professional Regulation Trust Fund.

(4) The council shall establish fees that are adequate to fund the cost to implement the provisions of this part. Fees shall be based on the department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of community association managers.

## 468.4336 Renewal of license.——

(1) The department shall renew a license upon receipt of the renewal application and fee and upon proof of compliance with the continuing education requirements of s. 468.4337.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

## 468.4337 Continuing education.——

The department may not renew a license until the licensee submits proof that the licensee has completed the requisite hours of continuing education. No more than 10 hours of continuing education annually shall be required for renewal of a license. The number of hours, criteria, and course content shall be approved by the council by rule.

## 468.4338 Reactivation; continuing education.——

The council shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed one renewal cycle of continuing education.

## 468.435 Fees; establishment; disposition.——

(1) The council shall, by rule, establish fees for the described purposes and within the ranges specified in this section:

(a) Application fee: not less than $25, or more than $50.

(b) Examination fee: not less than $25, or more than $100.

(c) Initial license fee: not less than $25, or more than $100.

(d) Renewal of license fee: not less than $25, or more than $100.

(e) Delinquent license fee: not less than $25, or more than $50.

(f) Inactive license fee: not less than $10, or more than $25.

(2) Until the council adopts rules establishing fees under subsection (1), the lower amount in each range shall apply.

(3) Fees collected under this section shall be deposited to the credit of the Professional Regulation Trust Fund.

(4) The council shall establish fees that are adequate to fund the cost to implement the provisions of this part. Fees shall be based on the department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of community association managers.

## 468.436 Disciplinary proceedings.——

(1) The department shall investigate complaints and allegations of a violation of this part or chapter 455, or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under the Department of Business and Professional Regulation. After a complaint is received, the department shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the department shall acknowledge the complaint in writing and notify the complainant whether or not the complaint is within the jurisdiction of the department and whether or not additional informa­tion is needed by the department from the complainant. The department shall conduct an investigation and shall, within 90 days after receipt of the original complaint or of a timely request for additional information, take action upon the complaint. However, the failure to complete the investiga­tion within 90 days does not prevent the department from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this part or chapter 455, or a rule of the department has occurred. If an investigation is not completed within the time limits estab­lished in this subsection, the department shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the department shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(a) Violation of any provision of s. 455.227(1).

(b) 1. Violation of any provision of this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(3) The council shall specify by rule the acts or omissions that constitute a violation of subsection (2).

(4) When the department finds any community association manager guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

(5) The department may reissue the license of a disciplined community association manager or firm upon certification by the department that the disciplined person or firm has complied with all of the terms and conditions set forth in the final order.

## Section 11.

Notwithstanding s. 455.225, Florida Statutes, any complaint or record maintained by the Department of Business and Professional Regulation pursuant to the discipline of a licensed community association manager and any proceeding held by the department to discipline a licensed community association manager shall remain open and available to the public.

## Section 12.

The regulation of community association managers as provided under part VIII of chapter 468, Florida Statutes, is transferred within the Department of Business and Professional Regulation from the Division of Florida Land Sales, Condominiums, and Mobile Homes to the Division of Professions. The administrative rules of the department relating to the regulation of community association managers that are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law. Any unexpended balance of appropriations, allocations, or other funds of the Division of Florida Land Sales, Condominiums, and Mobile Homes relating to the regulation of community association managers is transferred to the Professional Regulation Trust Fund. In addition, four FTE’s are transferred from the Division of Florida Land Sales, Condominiums, and Mobile Homes to the Division of Professions, and four FTE’s and $75,000 in startup costs are appropriated to the department from the Professional Regulation Trust Fund to implement the regulation of community association managers as provided by this act.

## 468.4365 Availability of disciplinary records and proceedings.—

Notwithstanding s. [455.225](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0455/Sections/0455.225.html), any complaint or record maintained by the Department of business and Professional Regulation pursuant to the discipline of a licensed community association manager and any proceeding held by the department to discipline a licensed community association manager shall remain open and available to the public.

## 468.437 Penalties.——

Any person who violates any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## 468.438 Time-share management firms. ——

(1) The provisions of this section apply only to community association management performed by a management firm acting as managing entity of a time-share plan pursuant to ch. 721.

(2) A time-share management firm shall only be required to employ at least one individual licensed under this part at each noncontiguous geographic location at which the management firm provides community association management. No other person providing community association management on behalf of such management firms shall be required to hold a license pursuant to this part, provided that any community association management provided pursuant to this section must be performed under the direct supervision and control of a licensed community association manager. A community association manager licensed pursuant to this part and employed by a time-share management firm pursuant to this section assumes responsibility for all community association management performed by unlicensed persons employed by the time-share management firm.

# REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS, AND APPRAISERS

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# PART I REAL ESTATE BROKERS, SALES ASSOCIATES, AND SCHOOLS

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The Legislature deems it necessary in the interest of the public welfare to regulate real estate brokers, sales associates, and schools in this state.

## 475.01 Definitions.—

(1) As used in this part:

(a) “Broker” means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. [95.11](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0095/Sections/0095.11.html)(4)(a). Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term “broker” also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term “broker” also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. [475.011](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.011.html) and [721.20](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0721/Sections/0721.20.html).

(b) “Broker associate” means a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.

(c) “Commission” means the Florida Real Estate Commission.

(d) [See Also 61J2-6.006 Employment by More Than One Entity.](#_61J2-6.006_Employment_by)

“Customer” means a member of the public who is or may be a buyer or seller of real property and may or may not be represented by a real estate licensee in an authorized brokerage relationship.

(e) “Department” means the Department of Business and Professional Regulation.

(f) “Fiduciary” means a broker in a relationship of trust and confidence between that broker as agent and the seller or buyer as principal. The duties of the broker as a fiduciary are loyalty, confidentiality, obedience, full disclosure, and accounting and the duty to use skill, care, and diligence.

(g) “Involuntarily inactive status” means the licensure status that results when a license is not renewed at the end of the license period prescribed by the department.

(h) “Principal” means the party with whom a real estate licensee has entered into a single agent relationship.

(i) “Real property” or “real estate” means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

(j) “Sales associate” means a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s.[95.11](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0095/Sections/0095.11.html)(4)(a).

(k) “Single agent” means a broker who represents, as a fiduciary, either the buyer or seller but not both in the same transaction.

(l) “Transaction broker” means a broker who provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent. In a transaction broker relationship, a buyer or seller is not responsible for the acts of a licensee. Additionally, the parties to a real estate transaction are giving up their rights to the undivided loyalty of a licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

(m) “Voluntarily inactive status” means the licensure status that results when a licensee has applied to the department to be placed on inactive status and has paid the fee prescribed by rule.

(2) The terms “employ,” “employment,” “employer,” and “employee,” when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.

(3) [61J2-5.015 License Status of Officers and Directors Required.](#_61J2-5.015_License_Status)

[61J2-5.017 Registration of Inactive Officers and Directors.](#_61J2-5.017_Registration_of)

Wherever the word “operate” or “operating” as a broker, broker associate, or sales associate appears in this chapter; in any order, rule, or regulation of the commission; in any pleading, indictment, or information under this chapter; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this chapter as constituting or defining a broker, broker associate, or sales associate, not including, however, any of the exceptions stated therein. A single such act is sufficient to bring a person within the meaning of this chapter, and each act, if prohibited herein, constitutes a separate offense.

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. [658.12](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0658/Sections/0658.12.html)(23).

## 475.011 Exemptions.—This part does not apply to:

(1) Any person acting as an attorney in fact for the purpose of the execution of contracts or conveyances only; as an attorney at law within the scope of her or his duties as such; as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such; as the personal representative, receiver, trustee, or general or special magistrate under, or by virtue of, an appointment by will or by order of a court of competent jurisdiction; or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof is charitable, is philanthropic, or provides for those having a natural right to the bounty of the donor or trustor.

(2) Any individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property; however, this exemption shall not be available if and to the extent that an agent, employee, or independent contractor paid a commission or other compensation strictly on a transactional basis is employed to make sales, exchanges, or leases to or with customers in the ordinary course of an owner’s business of selling, exchanging, or leasing real property to the public.

(3) Any employee of a public utility, a rural electric cooperative, a railroad, or a state or local governmental agency who acts within the scope of her or his employment, for which no compensation in addition to the employee’s salary is paid, to buy, sell, appraise, exchange, rent, auction, or lease any real property or any interest in real property for the use of her or his employer.

(4) Any salaried employee of an owner, or of a registered broker for an owner, of an apartment community who works in an onsite rental office of the apartment community in a leasing capacity.

(5) Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which the person may have in relation to the renting of individual units within such condominium or cooperative apartment complex if rentals arranged by the person are for periods no greater than 1 year.

(6) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, sells, offers to sell, advertises for sale, buys, offers to buy, or negotiates the sale or purchase of radio, television, or cable enterprises licensed and regulated by the Federal Communications Commission pursuant to the Communications Act of 1934. However, if the sale or purchase of the radio, television, or cable enterprise involves the sale or lease of land, buildings, fixtures, and all other improvements to the land, a broker or sales associate licensed under this chapter shall be retained for the portion of the transaction which includes the land, buildings, fixtures, and all other improvements to the land.

(7) Any full-time graduate student who is enrolled in a commission-approved degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a licensed broker or a licensed or certified appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual.

(8) (a) An owner of one or part of one or more timeshare periods for the owner’s own use and occupancy who later offers one or more of such periods for resale.

(b) An exchange company, as that term is defined by s. [721.05](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0721/Sections/0721.05.html)(15), but only to the extent that the exchange company is engaged in exchange program activities as described in and is in compliance with s. [721.18](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0721/Sections/0721.18.html).

(9) Any person registered, licensed, or certified by the department under part II as an appraiser or trainee appraiser performing appraisals in accordance with that part.

(10) Any person who appraises under the unit-rule method of valuation a railroad or railroad terminal company assessed for ad valorem tax purposes pursuant to s. [193.085](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0193/Sections/0193.085.html).

(11) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, rents or advertises for rent, for transient occupancy, any public lodging establishment licensed under chapter 509.

(12) Any dealer registered under the Securities and Exchange Act of 1934, as amended, or any federally insured depository institution and any parent, subsidiary, or affiliate thereof, in connection with the sale, exchange, purchase, or rental of a business enterprise to or by a person who is an accredited investor as defined by 15 U.S.C. s. 77b, the Securities Act of 1933, or any regulation adopted thereunder. This exemption applies whether stock or assets of the business enterprise are purchased or sold. The exemption does not apply to a sale, exchange, purchase, or rental of land, buildings, fixtures or other improvements to the land which is not made in connection with the sale, exchange, purchase, or rental of a business enterprise. Any reference to rental in this subsection includes a lease transaction.

(13) Any property management firm or any owner of an apartment complex for the act of paying a finder’s fee or referral fee to an unlicensed person who is a tenant in such apartment complex provided the value of the fee does not exceed $50 per transaction. Nothing in this subsection authorizes an unlicensed person to advertise or otherwise promote the person’s services in procuring or assisting in procuring prospective lessees or tenants of apartment units. For purposes of this subsection, “finder’s fee” or “referral fee” means a fee paid, credit towards rent, or some other thing of value provided to a person for introducing or arranging an introduction between parties to a transaction involving the rental or lease of an apartment unit. It is a violation of s. [475.25](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.25.html)(1)(h) and punishable under s. [475.42](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.42.html) for a property management firm or any owner of an apartment complex to pay a finder’s fee or a referral fee to an unlicensed person unless expressly authorized by this subsection.

## 475.02 Florida Real Estate Commission.—

[61J2-20.040 Membership.](#_61J2-20.040_Membership.)

(1) There is created within the department the Florida Real Estate Commission. The commission shall consist of seven members who shall be appointed by the Governor, subject to confirmation by the Senate. Four members must be licensed brokers, each of whom has held an active license for the 5 years preceding appointment; one member must be a licensed broker or a licensed sales associate who has held an active license for the 2 years preceding appointment; and two members must be persons who are not, and have never been, brokers or sales associates. At least one member of the commission must be 60 years of age or older. The current members may complete their present terms unless removed for cause.

(2) Members shall be appointed for 4-year terms.

(3) Notwithstanding s. 112.313, any member of the commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, school instructor permit, or any combination of such permits issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

## 475.021 Division of Real Estate.—

(1) All services concerning this chapter, including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in chapter 455 necessary to perform the duties of this chapter shall be provided by the Division of Real Estate. The commission may, by majority vote, delegate a duty or duties to the appropriate division within the department. The commission may, by majority vote, rescind any such delegation of duties at any time.

(2) The Division of Real Estate shall be funded by fees and assessments of the commission, and funds collected by the commission shall be used only to fund real estate regulation.

## 475.03 Delegation of powers and duties; legal services.—

(1) [61J2-20.051 Authorized Signatures on Final Orders.](#_61J2-20.051_Authorized_Signatures)

Any of the duties and powers of the commission, except disciplinary powers and the power to adopt rules, may be delegated, by resolution, to any member; but the chair may exercise such duties and powers without such resolution.

(2) Subject to the prior approval of the Attorney General, the commission may retain independent legal counsel to provide legal advice to the commission on a specific matter.

(3) No attorney employed or utilized by the commission shall prosecute a matter and provide legal services to the commission with respect to the same matter.

## 475.04 Duty of commission to educate members of profession.—

[See Also 61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.](#_61J2-3.008_Pre-licensing_Education)

[61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.009_Continuing_Education)

[61J2-3.010 License Reactivation Education for Brokers and Sales Associates.](#_61J2-3.010_License_Reactivation)

[61J2-3.012 Equivalency for Prelicensing Education.](#_61J2-3.010_License_Reactivation)

[61J2-3.013 Distance Education Courses for Hardship Cases.](#_61J2-3.013_Distance_Education)

[61J2-3.015 Notices of Satisfactory Course Completion.](#_61J2-3.015_Notices_of)

[61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.020_Post-licensing_Education)

[61J2-17.011 School Instructor Requirements and Qualifications.](#_61J2-17.011_School_Instructor)

[61J2-17.013 Interpretation of Particular Phrases.](#_61J2-17.013_Interpretation_of)

(1) The commission shall foster the education of brokers, broker associates, sales associates, and instructors concerning the ethical, legal, and business principles which should govern their conduct.

(2) For the purpose of performing its duty under subsection (1) to educate persons holding a license or permit, the commission may conduct, offer, sponsor, prescribe, or approve real estate educational courses for all persons licensed or permitted by the department as brokers, broker associates, sales associates, or instructors; and the cost and expense of such courses shall be paid as provided in s. 475.125.

(3) The commission may also publish and sell, at a reasonable price intended to cover costs, a handbook on this chapter and other publications intended to be textbooks or guidelines for study and guidance of students, applicants, licensees, certificateholders, and permitholders, and members of the general public, copyright of which shall be the property of the state.

## 475.045 Florida Real Estate Commission Education and Research Foundation.—

(1) (a) There is established a Florida Real Estate Commission Education and Research Foundation, hereinafter referred to as the “foundation,” which shall be administered by the commission.

(b) The purposes, objectives, and duties of the foundation are as follows:

1. To create and promote educational projects to expand the knowledge of the public and real estate licensees in matters pertaining to Florida real estate.

2. To augment the existing real estate programs by increasing the number of teaching personnel and real estate courses in the state in degree-granting programs in universities and colleges in this state.

3. To conduct studies in all areas that relate directly or indirectly to real estate or urban or rural economics and to publish and disseminate the findings and results of the studies.

4. To assist the teaching program in real estate offered by the universities, colleges, and real estate schools registered pursuant to this chapter in the state, when requested to do so.

5. To develop and from time to time revise and update materials for use in the courses in real estate offered by the universities, colleges, and real estate schools registered pursuant to this chapter in the state, when requested to do so.

6. To make studies of, and recommend changes in, state statutes and municipal ordinances; provided, however, that such studies are requested by the Governor or the presiding officers of the Legislature. The foundation shall maintain political nonadvocacy.

7. To periodically review the progress of persons conducting such research and studies. The results of any research project or study shall not be published or disseminated until it has been reviewed and approved in writing by the commission or its designated representative.

8. To prepare information of consumer interest concerning Florida real estate and to make the information available to the public and appropriate state agencies.

(c) The foundation may make a charge for its publications and may receive gifts and grants from foundations, individuals, and other sources for the benefit of the foundation.

(d) A report of the activities and accomplishments of the foundation shall be published annually.

(e) On or before January 1 of each year, the commission shall file with the Governor, the presiding officer of each house of the Legislature, and the secretary of the department a complete and detailed written report accounting for all funds received and disbursed by the foundation during the preceding year.

(2) (a) The commission shall solicit advice and information from real estate licensees, the commission, universities, colleges, real estate schools registered pursuant to this chapter and the general public for the purpose of submitting proposals for carrying out the purposes, objectives, and duties of the foundation.

(b) The commission shall select the proposals that shall be funded and shall give priority to projects with the greatest potential for direct or indirect benefit to the public.

(c) The commission shall select the university or college within the state or qualified full-time faculty member of a university or college within the state with the consent of the institution to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation. In those instances where no university or college within the state, or qualified full-time faculty member of a university or college within the state with the consent of the institution, submits an acceptable proposal, a qualified person or persons may be selected in accordance with law to perform the education study, research study, or other project in accordance with the purposes, objectives, and duties of the foundation.

(3) (a) The director of the Division of Real Estate of the department, hereinafter referred to as the “director,” or her or his designated representative shall submit to the commission, in advance of each fiscal year, a budget for expenditures of all funds provided for the foundation in a form that is related to the proposed schedule of activities for the review and approval of the commission.

(b) The director shall submit to the commission all proposals received for its review and approval in developing an educational and research agenda at the beginning of each fiscal year and shall continuously inform the commission of changes in its substance and scheduling.

(4) The commission shall have the power and authority to adopt all rules necessary to administer this section.

(5) The foundation may not fund or offer educational courses designed to qualify persons for licensure or the renewal of licenses pursuant to this chapter.

(6) The foundation may not expend any funds for the purpose of employing staff.

(7) The Chief Financial Officer shall invest $3 million from the portion of the Professional Regulation Trust Fund credited to the real estate profession, under the same limitations as applied to investments of other state funds, and the income earned thereon shall be available to the foundation to fund the activities and projects authorized under this section. However, any balance of such interest in excess of $1 million shall revert to the portion of the Professional Regulation Trust Fund credited to the real estate profession. In the event the foundation is abolished, the funds in the trust fund shall revert to such portion of the Professional Regulation Trust Fund.

## 475.05 Power of commission to enact bylaws and rules and decide questions of practice.—

[See Also 61J2-1.011 License Fees and Examination Fees.](#_61J2-1.011_License_Fees)

[See Also 61J2-1.013 Registration Categories.](#_61J2-1.013_Registration_Categories.)

The commission may enact bylaws for its own government and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring powers or duties upon it. The commission may decide questions of practice arising in the proceedings before it, having regard to this chapter and the rules then in force. Printed copies of rules, or written copies under the seal of the commission, shall be prima facie evidence of their existence and substance, and the courts shall judicially notice such rules.

## 475.10 Seal.—

[61J2-20.051 Authorized Signatures on Final Orders.](#_61J2-20.051_Authorized_Signatures)

The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the commission, and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chair, the custodian of such records, or another person authorized to make such certification and authenticated by such seal, shall be prima facie evidence thereof in all the courts of this state.

## 475.125 Fees.—

[See Also 61J2-1.016 Review of Fees.](#_61J2-1.016_Review_of)

[See Also 61J2-2.0261 Refund of Applicant and Registration Fees.](#_61J2-2.0261_Refund_of)

(1) The commission by rule may establish fees to be paid for application, examination, reexamination, licensing and renewal, certification and recertification, reinstatement, and recordmaking and recordkeeping. The fee for initial application and examination may not exceed $100. The initial license fee and the license renewal fee may not exceed $50 for each year of the duration of the license. The commission may also establish by rule a late renewal penalty. The commission shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this chapter and other provisions of law relating to the regulation of real estate practitioners.

(2) Application and license fees shall be refunded upon a determination by the commission that the state is not entitled to the fees or that only a portion of the resources have been expended in the processing of the application, or if for any other reason the application is not completely processed. The commission shall implement this provision by rule.

## 475.15 Registration and licensing of general partners, members, officers, and directors of a firm.—

[61J2-9.007 Change of Name.](#_61J2-9.007_Change_of)

[61J2-1.013 Registration Categories.](#_61J2-1.013_Registration_Categories.)

[61J2-4.007 Registration Requirements.](#_61J2-4.007_Registration_Requirement)

[61J2-4.010 Successor Partnerships.](#_61J2-4.010_Successor_Partnerships.)

[61J2-5.014 Registration of Corporation.](#_61J2-5.014_Registration_of)

[61J2-5.015 License Status of Officers and Directors Required.](#_61J2-5.015_License_Status)

[61J2-5.016 License Status of Active Officers and Directors.](#_61J2-5.016_License_Status)

[61J2-5.017 Registration of Inactive Officers and Directors.](#_61J2-5.017_Registration_of)

[61J2-5.019 Responsibility for Registration Status.](#_61J2-5.019_Responsibility_for)

[61J2-5.020 Execution of Papers by Corporation.](#_61J2-5.020_Execution_of)

[**61J2-10.034 Trade Names.**](#_61J2-10.034_Trade_Names.)

Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker shall register with the commission and shall renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time. The commission shall adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

## 475.161 Licensing of broker associates and sales associates.—

[61J2-5.016 License Status of Active Officers and Directors.](#_61J2-5.016_License_Status)

The commission shall license a broker associate or sales associate as an individual or, upon the licensee providing the commission with authorization from the Department of State, as a professional corporation, limited liability company, or professional limited liability company. A license shall be issued in the licensee’s legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm under s. 475.15.

## 475.17 Qualifications for practice.—

[See Also 61J2-2.027 Applications by Individuals.](#_61J2-2.027_Applications_by)

[61J2-2.032 Informal Hearings.](#_61J2-2.032_Informal_Hearings.)

[61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.](#_61J2-2.032_Informal_Hearings.)

[61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.009_Continuing_Education)

[61J2-3.010 License Reactivation Education for Brokers and Sales Associates.](#_61J2-3.010_License_Reactivation)

[61J2-3.012 Equivalency for Prelicensing Education.](#_61J2-3.012_Equivalency_for)

[61J2-3.015 Notices of Satisfactory Course Completion.](#_61J2-3.015_Notices_of)

[61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.020_Post-licensing_Education)

(1) (a) An applicant for licensure who is a natural person must be at least 18 years of age; hold a high school diploma or its equivalent; be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. An applicant for an active broker’s license or a sales associate’s license must be competent and qualified to make real estate transactions and conduct negotiations therefor with safety to investors and to those with whom the applicant may undertake a relationship of trust and confidence. If the applicant has been denied registration or a license or has been disbarred, or the applicant’s registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revoking or suspending her or his license under this chapter had the applicant then been registered, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the commission that the interest of the public and investors will not likely be endangered by the granting of registration. The commission may adopt rules requiring an applicant for licensure to provide written information to the commission regarding the applicant’s good character.

(b) An application may be disapproved if the applicant has acted or attempted to act, or has held herself or himself out as entitled to act, during the period of 1 year next prior to the filing of the application, as a real estate broker or sales associate in the state in violation of this chapter. This paragraph may be deemed to bar any person from licensure who has performed any of the acts or services described in s. 475.01(3), unless exempt pursuant to s. 475.011, during a period of 1 year next preceding the filing of the application, or during the pendency of the application, and until a valid current license has been duly issued to the person, regardless of whether the performance of the act or service was done for compensation or valuable consideration.

(2) [See Also 61J2-3.013 Distance Education Courses for Hardship Cases.](#_61J2-3.013_Distance_Education)

(a) 1. In addition to other requirements under this part, the commission may require the satisfactory completion of one or more of the educational courses or equivalent courses conducted, offered, sponsored, prescribed, or approved pursuant to s. 475.04, taken at an accredited college, university, or community college, at a career center, or at a registered real estate school, as a condition precedent for any person to become licensed or to renew her or his license as a broker, broker associate, or sales associate. The course or courses required for one to become initially licensed shall not exceed a total of 63 classroom hours of 50 minutes each, inclusive of examination, for a sales associate and 72 classroom hours of 50 minutes each, inclusive of examination, for a broker. The satisfactory completion of an examination administered by the accredited college, university, or community college, by a career center, or by the registered real estate school shall be the basis for determining satisfactory completion of the course. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 8 classroom hours.

2. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the course or courses as required by this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning course requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

3. Such required course or courses must be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or places where the course or courses are regularly conducted or does not have access to the distance learning course or courses.

(b) A person may not be licensed as a real estate broker unless, in addition to the other requirements of law, the person has held:

1. An active real estate sales associate’s license for at least 24 months during the preceding 5 years in the office of one or more real estate brokers licensed in this state or any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction;

2. A current and valid real estate sales associate’s license for at least 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in this part for real estate licensees; or

3. A current and valid real estate broker’s license for at least 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States or in any foreign national jurisdiction.

(c) A person who has been licensed as a real estate sales associate in Florida during the preceding 5 years may not be licensed as a real estate broker unless, in addition to the other requirements of law, she or he has completed the sales associate postlicensure educational requirements, if these requirements have been prescribed by the commission pursuant to paragraph (3)(a).

(3) (a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid sales associate’s license, which shall not exceed 45 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 45 classroom hours on one or more subjects which include, but are not limited to, property management, appraisal, real estate finance, the economics of real estate management, marketing, technology, sales and listing of properties, business office management, courses teaching practical real estate application skills, development of business plans, marketing of property, and time management. Required postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by successfully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any sales associate who does not complete the postlicensure education requirement prior to the first renewal following initial licensure shall be considered null and void. Such person wishing to again operate as a real estate sales associate must requalify by satisfactorily completing the sales associate’s prelicensure course and passing the state examination for licensure as a sales associate.

(d) A sales associate who is required to complete any postlicensure education requirement must complete any postlicensure education requirement and hold a current and valid license in order to be eligible for licensure as a broker.

(4) (a) The commission may prescribe a postlicensure education requirement in order for a person to maintain a valid broker’s license, which shall not exceed 60 classroom hours of 50 minutes each, inclusive of examination, prior to the first renewal following initial licensure. If prescribed, this shall consist of one or more commission-approved courses which total at least 60 classroom hours on one or more subjects which include, but are not limited to, advanced appraisal, advanced property management, real estate marketing, business law, advanced real estate investment analyses, advanced legal aspects, general accounting, real estate economics, syndications, commercial brokerage, feasibility analyses, advanced real estate finance, residential brokerage, advanced marketing, technology, advanced business planning, time management, or real estate brokerage office operations. Required postlicensure education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.

(b) Satisfactory completion of the postlicensure education requirement is demonstrated by successfully meeting all standards established for the commission-prescribed or commission-approved institution or school. However, notice of satisfactory completion shall not be issued if the student has absences in excess of 10 percent of the required classroom hours or has not satisfactorily completed a timed distance learning course examination.

(c) The license of any broker who does not complete the postlicensure education requirement prior to the first renewal following initial licensure shall be considered null and void. If the licensee wishes to operate as a sales associate, she or he may be issued a sales associate’s license after providing proof that she or he has satisfactorily completed the 14-hour continuing education course within the 6 months following expiration of her or his broker’s license. To operate as a broker, the licensee must requalify by satisfactorily completing the broker’s prelicensure course and passing the state examination for licensure as a broker.

(5) (a) The commission may allow an additional 6-month period after the first renewal following initial licensure for completing the postlicensure education courses for sales associates and brokers who cannot, due to individual physical hardship, as defined by rule, complete the courses within the required time.

(b) Except as provided in subsection (4), sales associates and brokers are not required to meet the 14-hour continuing education requirement prior to the first renewal following initial licensure.

(c) 1. A distance learning course or courses shall be approved by the commission as an option to classroom hours as satisfactory completion of the postlicensure education course or courses as required by this section. The schools or sponsors authorized by this section have the option of providing classroom courses, distance learning courses, or both. However, satisfactory completion of a distance learning postlicensure education course or courses requires the satisfactory completion of a timed distance learning course examination. Such examination shall not be required to be monitored or given at a centralized location.

2. The commission shall provide for postlicensure education courses to be made available by correspondence or other suitable means to any person who, by reason of hardship, as defined by rule, cannot attend the place or places where courses are regularly conducted or does not have access to the distance learning courses.

(6) The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree, or higher, in real estate from an accredited institution of higher education.

(7) The commission may not approve prelicensure or postlicensure distance learning courses for brokers, broker associates, and sales associates by correspondence methods, except in instances of hardship pursuant to subparagraphs (2)(a)3. and (5)(c)2.

## 475.175 Examinations.—

[See Also 61J2-2.0261 Refund of Applicant and Registration Fees.](#_61J2-2.0261_Refund_of)

[See Also 61J2-2.027 Applications by Individuals.](#_61J2-2.027_Applications_by)

[See Also 61J2-2.031 Where to Apply.](#_61J2-2.031_Where_to)

(1) A person shall be entitled to take the license examination to practice in this state if the person:

(a) Submits to the department the appropriate signed or electronically authenticated application, digital fingerprint data, and fee. The digital fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprints to determine if the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprints to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for examination.

(b) Submits at the time of examination the certificate specified in subsection (2), the examination admissions authorization letter, and proof of identification.

(2) Each accredited college, university, community college, or registered real estate school shall notify the commission of the names of all persons who have satisfactorily completed the educational requirements provided for in s. 475.17(2), (3), and (4) in a manner prescribed by the commission. Furthermore, each such educational institution shall provide to each person satisfactorily completing the educational requirements provided for in s. 475.17(2), (3), and (4) a certificate as proof of such satisfactory completion.

## 475.180 Nonresident licenses.—

[61J2-26.001 Examination Requirements.](#_61J2-26.001_Examination_Requirement)

[61J2-26.002 Residency.](#_61J2-26.002_Residency.)

[61J2-26.003 Post-License and Continuing Education.](#_61J2-26.003_Post-License_and)

(1) Notwithstanding the prelicensure requirements set forth under ss. 475.17(2) and (6) and 475.175, the commission in its discretion may enter into written agreements with similar licensing authorities of other states, territories, or jurisdictions of the United States or foreign national jurisdictions to ensure for Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this section. Whenever the commission determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction by this section, the commission shall require licensees of that jurisdiction who apply for nonresident licensure to meet education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to Florida licensees who seek nonresident licensure, not to exceed such requirements as prescribed in ss. 475.17(2) and (6) and 475.175.

(2) (a) Any resident licensee who becomes a nonresident shall, within 60 days, notify the commission of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.25.

(b) All nonresident applicants and licensees shall comply with all requirements of commission rules and this part. The commission may adopt rules necessary for the regulation of nonresident licensees.

## 475.181 Licensure.—

[See Also 61J2-2.030 Notice of Denial.](#_61J2-2.030_Notice_of)

[61J2-10.034 Trade Names.](#_61J2-10.034_Trade_Names.)

(1) The department shall license any applicant whom the commission certifies, pursuant to subsection (2), to be qualified to practice as a broker or sales associate.

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years after the date received if the applicant does not pass the appropriate examination. Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant’s successful course completion is invalid for licensure.

(3) The department may not issue a license to any applicant who is under investigation in any other state, territory, or jurisdiction of the United States or any foreign national jurisdiction for any act that would constitute a violation of this part or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

## 475.182 Renewal of license; continuing education.—

[See Also 61J2-2.0261 Refund of Applicant and Registration Fees.](#_61J2-2.0261_Refund_of)

[61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.009_Continuing_Education)

[61J2-3.010 License Reactivation Education for Brokers and Sales Associates.](#_61J2-3.010_License_Reactivation)

[61J2-3.012 Equivalency for Prelicensing Education.](#_61J2-3.012_Equivalency_for)

[61J2-3.015 Notices of Satisfactory Course Completion.](#_61J2-3.015_Notices_of)

[61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.020_Post-licensing_Education)

(1) (a) The department shall renew a license upon receipt of the renewal application and fee. The renewal application for an active license as broker, broker associate, or sales associate shall include proof satisfactory to the commission that the licensee has, since the issuance or renewal of her or his current license, satisfactorily completed at least 14 classroom hours of 50 minutes each of a continuing education course during each biennium of a license period, as prescribed by the commission. Approval or denial of a specialty course must be based on the extent to which the course content focuses on real estate issues relevant to the modern practice of real estate by a real estate licensee, including technology used in the real estate industry. The commission may accept as a substitute for such continuing education course, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course that the commission finds is adequate to educate licensees within the intent of this section, including an approved distance learning course. However, the commission may not require, for the purpose of satisfactorily completing an approved correspondence or distance learning course, a written examination that is to be taken at a centralized location and is to be monitored.

(b) The commission may accept as a substitute for 3 classroom hours, one time per renewal cycle, attendance at one legal agenda session of the commission. In order to obtain credit, the licensee must notify the division at least 7 days in advance of his or her intent to attend. A licensee may not earn any continuing education credit for attending a legal agenda session of the commission as a party to a disciplinary action.

(2) The department shall adopt rules establishing a procedure for the renewal of licenses at least every 4 years.

(3) Any license that is not renewed at the end of the license period prescribed by the department shall automatically revert to involuntarily inactive status. Such license may subsequently be renewed only if the licensee meets the other qualifications specified in s. 475.183.

(4) Sixty days before the end of the license period and automatic reversion of a license to inactive status, the department shall mail a notice of renewal and possible reversion to the last known address of the licensee.

## 475.183 Inactive status.—

[See Also 61J2-1.013 Registration Categories.](#_61J2-1.013_Registration_Categories.)

[61J2-1.014 Inactive Renewal.](#_61J2-1.014_Inactive_Renewal.)

[61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.](#_61J2-3.008_Pre-licensing_Education)

[61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.009_Continuing_Education)

[61J2-3.010 License Reactivation Education for Brokers and Sales Associates.](#_61J2-3.010_License_Reactivation)

[61J2-3.012 Equivalency for Prelicensing Education.](#_61J2-3.012_Equivalency_for)

[61J2-3.015 Notices of Satisfactory Course Completion.](#_61J2-3.015_Notices_of)

(1) A license which has become voluntarily inactive may be renewed pursuant to s. 475.182 upon application to the department. The commission shall prescribe by rule continuing education requirements, not to exceed 12 classroom hours for each year the license was inactive, as a condition of renewing a voluntarily inactive license. The commission shall substitute for such continuing education requirements, on a classroom-hour-for-classroom-hour basis, any satisfactorily completed education course approved in the manner specified in s. 475.182(1). A person whose license is voluntarily inactive and who renews the license may elect to continue her or his voluntarily inactive status.

(2) (a) A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of a commission-prescribed continuing education course. Notwithstanding the provisions of s. 455.271, a licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by satisfactorily completing 28 hours of a commission-prescribed education course.

(b) Any license that has been involuntarily inactive for more than 2 years shall automatically expire. Once a license expires, it becomes null and void without any further action by the commission or department. Ninety days prior to expiration of the license, the department shall give notice to the licensee. The commission shall prescribe by rule a fee not to exceed $100 for the late renewal of an involuntarily inactive license. The department shall collect the current renewal fee for each renewal period in which the license was involuntarily inactive in addition to any applicable late renewal fee.

(3) The commission shall adopt rules relating to voluntarily inactive and involuntarily inactive licenses, and for the renewal of such licenses.

(4) The commission may reinstate the license of an individual whose license has become void if the commission determines that the individual failed to comply because of illness or economic hardship, as defined by rule. The individual must apply to the commission for reinstatement within 6 months after the date that the license becomes void. Such individual must meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this section.

## 475.215 Multiple licenses.—

(1) A licensed broker may be issued upon request additional licenses as a broker, but not as a sales associate or as a broker associate, whenever it is clearly shown that the requested additional licenses are necessary to the conduct of real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial or harmful to any person, including a licensee under this chapter. The commission may also deny a multiple license request pursuant to s. 475.17(1)(a). A final order of discipline rendered against a broker for a violation of this part or s. 455.227(1) applies to the primary license of the broker as well as any multiple licenses held by that broker at the time the final order becomes effective.

(2) A sales associate or broker associate shall have no more than one registered employer at any one time.

## 475.22 Broker to maintain office and sign at entrance of office; registered office outside state; broker required to cooperate in investigation.—

See Also: [61J2-10.022 Office.](#_61J2-10.022_Office.)

(1) Each active broker shall maintain an office, which shall consist of at least one enclosed room in a building of stationary construction. Each active broker shall maintain a sign on or about the entrance of her or his principal office and each branch office, which sign may be easily observed and read by any person about to enter such office. Each sign must contain the name of the broker, together with the trade name, if any. For a partnership or corporation, the sign must contain the name of the firm or corporation or trade name of the firm or corporation, together with the name of at least one of the brokers. At a minimum, the words “licensed real estate broker” or “lic. real estate broker” must appear on the office entrance signs.

(2) If a broker’s registered office is located outside the State of Florida, prior to registering such office or branch office, the broker shall agree in writing to cooperate and shall cooperate with any investigation initiated in accordance with this chapter or commission rules including, but not limited to, the broker promptly supplying any documents requested by any authorized representative of the department and by personally appearing at any designated office of the department or other location in the state or elsewhere as reasonably requested by the department. If the department sends, by certified mail to the broker at the broker’s last known business address as registered with the department, a notice or request to produce any documents or to appear for an interview with an authorized representative of the department and the broker fails to substantially comply with that request or notice, then such failure by the broker is a violation of the license law, subject to the penalties of s. 475.25.

## 475.23 License to expire on change of address.—

[See Also 61J2-5.020 Execution of Papers by Corporation.](#_61J2-5.020_Execution_of)

[61J2-10.023 Branch Office.](#_61J2-10.023_Branch_Office.)

A license shall cease to be in force whenever a broker changes her or his business address, a real estate school operating under a permit issued pursuant to s. 475.451 changes its business address, or a sales associate working for a broker or an instructor working for a real estate school changes employer. The licensee shall notify the commission of the change no later than 10 days after the change, on a form provided by the commission. When a broker or a real estate school changes business address, the brokerage firm or school permitholder must file with the commission a notice of the change of address, along with the names of any sales associates or instructors who are no longer employed by the brokerage or school. Such notification shall also fulfill the change of address notification requirements for sales associates who remain employed by the brokerage and instructors who remain employed by the school.

## 475.24 Branch office; fees.—

[See Also 61J2-10.023 Branch Office.](#_61J2-10.023_Branch_Office.)

[**61J2-24.001** **Disciplinary Guidelines.**](#_61J2-24.001_Disciplinary_Guidelines)

Whenever any licensee desires to conduct business at some other location, either in the same or a different municipality or county than that in which she or he is licensed, such other place of business shall be registered as a branch office, and an annual registration fee prescribed by the commission, in an amount not exceeding $50, shall be paid for each such office. It shall be necessary to maintain and register a branch office whenever, in the judgment of the commission, the business conducted at a place other than the principal office is of such a nature that the public interest requires registration of the branch office. Any office shall be deemed to be a branch office if the name or advertising of a broker having a principal office located elsewhere is displayed in such a manner as to reasonably lead the public to believe that such office is owned or operated by such broker.

## 475.25 Discipline.—

[See Also 61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.](#_61J2-1.015_Exemption_of)

[61J2-2.032 Informal Hearings.](#_61J2-2.032_Informal_Hearings.)

[61J2-9.007 Change of Name.](#_64E-9.007_Recirculation_and)

[61J2-10.025 Advertising.](#_61J2-10.025_Advertising.)

[61J2-24.001 Disciplinary Guidelines.](#_61J2-24.001_Disciplinary_Guidelines)

[61J2-24.002 Citation Authority.](#_61J2-24.002_Citation_Authority.)

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed $5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

(c) Has advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content. The commission may adopt rules defining methods of advertising that violate this paragraph.

(d) 1. [61J2-10.032 Notice Requirements.](#_61J2-10.032_Notice_Requirements.)

[61J2-14.010 Real Estate Broker.](#_61J2-14.010_Real_Estate)

[61J2-14.011 Rights of Broker in Deposits.](#_61J2-14.011_Rights_of)

[61J2-14.012 Broker’s Records.](#_61J2-14.012_Broker’s_Records.)

Has failed to account or deliver to any person, including a licensee under this chapter, at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission if a civil judgment relating to the practice of the licensee’s profession has been obtained against the licensee and said judgment has not been satisfied in accordance with the terms of the judgment within a reasonable time, or any secret or illegal profit, or any divisible share or portion thereof, which has come into the licensee’s hands and which is not the licensee’s property or which the licensee is not in law or equity entitled to retain under the circumstances. However, if the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for the escrowed property, which property she or he still maintains in her or his escrow or trust account, the licensee shall promptly notify the commission of such doubts or conflicting demands and shall promptly:

a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;

b. With the consent of all parties, submit the matter to arbitration;

c. By interpleader or otherwise, seek adjudication of the matter by a court; or

d. With the written consent of all parties, submit the matter to mediation. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

If the licensee promptly employs one of the escape procedures contained herein and abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property. Under certain circumstances, which the commission shall set forth by rule, a licensee may disburse property from the licensee’s escrow account without notifying the commission or employing one of the procedures listed in sub-subparagraphs a.-d. If the buyer of a residential condominium unit delivers to a licensee written notice of the buyer’s intent to cancel the contract for sale and purchase, as authorized by s. 718.503, or if the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase, the licensee may return the escrowed property to the purchaser without notifying the commission or initiating any of the procedures listed in sub-subparagraphs a.-d.

2. Has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales associate, or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(g) Has had a broker’s or sales associate’s license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

(i) Has become temporarily incapacitated from acting as a broker or sales associate with safety to investors or those in a fiduciary relation with her or him because of drunkenness, use of drugs, or temporary mental derangement; but suspension of a license in such a case shall be only for the period of such incapacity.

(j) Has rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or has failed to advise a prospective purchaser to consult her or his attorney on the merchantability of the title or to obtain title insurance.

(k) [61J2-14.008 Definitions.](#_61J2-14.008_Definitions.)

[61J2-14.009 Real Estate Sales Associate.](#_61J2-14.009_Real_Estate)

[61J2-14.010 Real Estate Broker.](#_61J2-14.009_Real_Estate)

[61J2-14.011 Rights of Broker in Deposits.](#_61J2-14.009_Real_Estate)

[61J2-14.012 Broker’s Records.](#_61J2-14.012_Broker’s_Records.)

[61J2-14.014 Interest-Bearing Escrow Accounts.](#_61J2-14.014_Interest-Bearing_Escrow)

Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by her or him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made. A broker may place and maintain up to $5,000 of personal or brokerage funds in the broker’s property management escrow account and up to $1,000 of personal or brokerage funds in the broker’s sales escrow account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker’s escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

(l) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate.

(m) Has obtained a license by means of fraud, misrepresentation, or concealment.

(n) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; is under home confinement ordered in lieu of institutional confinement; or, through mental disease or deterioration, can no longer safely be entrusted to competently deal with the public.

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

(p) Has failed to inform the commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(q) Has violated any provision of s. 475.2755 or s. 475.278, including the duties owed under those sections.

(r) Has failed in any written listing agreement to include a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal(s); and has failed to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing agreement shall contain no provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

(s) Has had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The record of the disciplinary action certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such disciplinary action.

(t) Has violated any standard of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

(u) Has failed, if a broker, to direct, control, or manage a broker associate or sales associate employed by such broker. A rebuttable presumption exists that a broker associate or sales associate is employed by a broker if the records of the department establish that the broker associate or sales associate is registered with that broker. A record of licensure which is certified or authenticated in such form as to be admissible in evidence under the laws of the state is admissible as prima facie evidence of such registration.

(v) Has failed, if a broker, to review the brokerage’s trust accounting procedures in order to ensure compliance with this chapter.

(2) A license may be revoked or canceled if it was issued through the mistake or inadvertence of the commission. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

(3) The department shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the commission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

(4) [See Also: 61J2-24.006 Probation.](#_61J2-24.006_Probation.)

The commission may adopt rules allowing the director of the Division of Real Estate to grant to a licensee placed on probation additional time within which to complete the terms of probation, but the rules must allow the licensee to appeal any denial to the commission.

(5) An administrative complaint against a broker, broker associate, or sales associate shall be filed within 5 years after the time of the act giving rise to the complaint or within 5 years after the time the act is discovered or should have been discovered with the exercise of due diligence.

(6) The department or commission shall promptly notify a licensee’s broker or employer, as defined in this part, in writing, when a formal complaint is filed against the licensee alleging violations of this chapter or chapter 455. The department shall not issue a notification to the broker or employer until 10 days after a finding of probable cause has been found to exist by the probable cause panel or by the department, or until the licensee waives his or her privilege of confidentiality under s. 455.225, whichever occurs first.

(7) The commission shall promptly report to the proper prosecuting authority any criminal violation of any statute relating to the practice of a real estate profession regulated by the commission.

## 475.255 Determination of agency or transactional brokerage relationship.—

Without consideration of the related facts and circumstances, the mere payment or promise to pay compensation to a licensee does not determine whether an agency or transactional brokerage relationship exists between the licensee and a seller, landlord, buyer, or tenant.

## 475.2701 Short title.—

Sections 475.2701-475.2801 may be cited as the “Brokerage Relationship Disclosure Act.”

## 475.272 Purpose.—

In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

(1) Disclosed dual agency as an authorized form of representation by a real estate licensee in this state is expressly revoked;

(2) Disclosure requirements for real estate licensees relating to authorized forms of brokerage representation are established;

(3) Single agents may represent either a buyer or a seller, but not both, in a real estate transaction; and

(4) Transaction brokers provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a real estate transaction.

## 475.274 Scope of coverage.—

The authorized brokerage relationships described in ss. 475.2755 and 475.278 apply in all brokerage activities as defined in s. 475.01(1)(a). The disclosure requirements of s. 475.278 apply only to residential sales as defined in s. 475.278(5)(a).

## 475.2755 Designated sales associate.—

(1) For purposes of this part, in any real estate transaction other than a residential sale as defined in s. 475.278(5)(a), and where the buyer and seller have assets of $1 million or more, the broker at the request of the customers may designate sales associates to act as single agents for different customers in the same transaction. Such designated sales associates shall have the duties of a single agent as outlined in s. 475.278(3), including disclosure requirements in s. 475.278(3)(b) and (c). In addition to disclosure requirements in s. 475.278(3)(b) and (c), the buyer and seller as customers shall both sign disclosures stating that their assets meet the threshold described in this subsection and requesting that the broker use the designated sales associate form of representation. In lieu of the transition disclosure requirement in s. 475.278(3)(c)2., the required disclosure notice shall include the following:

FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

(2) For purposes of this section, the term “buyer” means a transferee or lessee in a real property transaction, and the term “seller” means the transferor or lessor in a real property transaction.

## 475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—

(1) BROKERAGE RELATIONSHIPS.—

(a) Authorized brokerage relationships.—A real estate licensee in this state may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. A real estate licensee may not operate as a disclosed or nondisclosed dual agent. As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction. This part does not prevent a licensee from changing from one brokerage relationship to the other as long as the buyer or the seller, or both, gives consent as required by subparagraph (3)(c)2. before the change and the appropriate disclosure of duties as provided in this part is made to the buyer or seller. This part does not require a customer to enter into a brokerage relationship with any real estate licensee.

(b) *Presumption of transaction brokerage.*—It shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer.

(2) TRANSACTION BROKER RELATIONSHIP.—A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. The duties of the real estate licensee in this limited form of representation include the following:

(a) Dealing honestly and fairly;

(b) Accounting for all funds;

(c) Using skill, care, and diligence in the transaction;

(d) Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;

(e) Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

(f) Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

(g) Any additional duties that are mutually agreed to with a party.

(3) SINGLE AGENT RELATIONSHIP.—

(a) *Single agent–duties.*—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

(b) Disclosure requirements.—

1. Single agent disclosure.—Duties of a single agent must be fully described and disclosed in writing to a buyer or seller either as a separate and distinct disclosure document or included as part of another document such as a listing agreement or other agreement for representation. The disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a single agent, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase and bold type.

2. Transition to transaction broker disclosure.—A single agent relationship may be changed to a transaction broker relationship at any time during the relationship between an agent and principal, provided the agent first obtains the principal’s written consent to the change in relationship. This disclosure must be in writing to the principal either as a separate and distinct document or included as part of other documents such as a listing agreement or other agreements for representation. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of limited representation, except that the first sentence of the information identified in subparagraph (c)2. must be printed in uppercase and bold type.

(c) *Contents of disclosure.*—

1. Single agent duties disclosure.—The notice required under subparagraph (b)1. must include the following information in the following form:

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, (insert name of Real Estate Entity and its Associates) owe to you the following duties:

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature |

2. Transition disclosure.—To gain the principal’s written consent to a change in relationship, a licensee must use the following disclosure:CONSENT TO TRANSITION TO  
TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker,   (insert name of Real Estate Firm and its Associates)  , provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;

2. Accounting for all funds;

3. Using skill, care, and diligence in the transaction;

4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;

5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

    I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(4) NO BROKERAGE RELATIONSHIP.—

(a) *No brokerage relationship–duties.*—A real estate licensee owes to a potential seller or buyer with whom the licensee has no brokerage relationship the following duties:

1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of the residential real property which are not readily observable to the buyer; and

3. Accounting for all funds entrusted to the licensee.

(b) *Disclosure requirements.*—Duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller. The disclosure must be made before the showing of property. When incorporated into other documents, the required notice must be of the same size type, or larger, as other provisions of the document and must be conspicuous in its placement so as to advise customers of the duties of a licensee that has no brokerage relationship with a buyer or seller, except that the first sentence of the information identified in paragraph (c) must be printed in uppercase bold type.

(c) *Contents of disclosure.*—The notice required under paragraph (b) must include the following information in the following form:

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you,   (insert name of Real Estate Entity and its Associates)   owe to you the following duties:

1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer.

3. Accounting for all funds entrusted to the licensee.

  (Date)         (Signature)

(5) APPLICABILITY.—

(a) *Residential sales.*—The real estate licensee disclosure requirements of this section apply to all residential sales. As used in this subsection, the term “residential sale” means the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of 10 acres or fewer.

(b) Disclosure limitations.—

1. The real estate disclosure requirements of this section do not apply when a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker; or when an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner’s employee or single agent is acting on behalf of the owner, whether because of the location of the sales office or because of office signage or placards or identification badges worn by the owner’s employee or single agent.

2. The real estate licensee disclosure requirements of this section do not apply to: nonresidential transactions; the rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or fewer residential units is given; a bona fide “open house” or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; unanticipated casual conversations between a licensee and a seller or buyer which do not involve eliciting confidential information, the execution of a contractual offer or agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale; responding to general factual questions from a potential buyer or seller concerning properties that have been advertised for sale; situations in which a licensee’s communications with a potential buyer or seller are limited to providing general factual information, oral or written, about the qualifications, background, and services of the licensee or the licensee’s brokerage firm; auctions; appraisals; and dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units.

## 475.28 Rules of evidence.—

(1) In all proceedings before the commission or the courts, civil or criminal, in which the payment, receipt, or expectation of a commission, compensation, or a valuable consideration is a necessary element of the offense, proof of the performance of the act, service, or condition for which such commission, compensation, or valuable consideration is required to be shown shall be prima facie evidence that such act, service, or condition was performed or existed for or in expectation of the payment or receipt of a commission, compensation, or a valuable consideration. If it is material to determine whether or not a party to any action, civil or criminal, is properly licensed, the burden of proof shall be on such party.

(2) Photostatic copies of any papers or documents may be introduced in lieu of the originals in any proceeding or prosecution under this chapter. The books of account and records of any person shall be admissible upon a showing that they were made in the regular course of business, without introducing the person who made the entries, the weight of such evidence to be decided by the court or commission.

## 475.2801 Rules.—

The commission may adopt rules establishing disciplinary guidelines, notices of noncompliance, and citations for violations of ss. 475.2755 and 475.278.

## 475.31 Final orders.—

[See Also 61J2-5.017 Registration of Inactive Officers and Directors.](#_61J2-5.017_Registration_of)

[61J2-5.019 Responsibility for Registration Status.](#_61J2-5.019_Responsibility_for)

(1) An order revoking or suspending the license of a broker shall automatically cause the licenses of all sales associates and broker associates registered with the broker, and, if a partnership or corporation, of all members, officers, and directors thereof to become involuntarily inactive, while the license of the broker is inoperative or until new employment or connection is secured.

(2) The commission may publish and distribute in such manner and form as it may prescribe any of its final orders or decisions made under this chapter, after they become final by lapse of time or upon affirmance on appeal, or opinions of appellate courts for the guidance of registrants and the public; and it may publish or withhold from publication the names and addresses of any parties concerned. This subsection shall not be construed to affect the operation of chapter 119.

## 475.37 Effect of reversal of order of court or commission.—

If the order of the court or commission denying a license or taking any disciplinary action against a licensee is finally reversed and set aside, the defendant shall be restored to her or his rights and privileges as a broker or sales associate as of the date of filing the mandate or a copy thereof with the commission. The matters and things alleged in the information shall not thereafter be reexamined in any other proceeding concerning the licensure of the defendant. If the inquiry concerned was in reference to an application for licensure, the application shall stand approved, and such application shall be remanded for further proceedings according to law.

## 475.38 Payment of costs.—

The commission shall not be required to advance any fees or costs to any officer or witness, or to execute any bond in any proceeding in the courts, any general statute to the contrary notwithstanding, but in every case in which the commission is liable for any fees or costs, a voucher therefor shall be presented to the commission and, if approved, shall be audited and paid as are other expenses of the commission.

## 475.41 Contracts of unlicensed person for commissions invalid.—

No contract for a commission or compensation for any act or service enumerated in s. 475.01(3) is valid unless the broker or sales associate has complied with this chapter in regard to issuance and renewal of the license at the time the act or service was performed.

## 475.42 Violations and penalties.—

[See Also 61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.](#_61J2-1.015_Exemption_of)

[61J2-5.017 Registration of Inactive Officers and Directors.](#_61J2-5.017_Registration_of)

[61J2-5.019 Responsibility for Registration Status.](#_61J2-5.019_Responsibility_for)

[61J2-5.020 Execution of Papers by Corporation.](#_61J2-5.020_Execution_of)

[61J2-9.007 Change of Name.](#_61J2-9.007_Change_of)

[61J2-10.025 Advertising.](#_61J2-10.025_Advertising.)

[61J2-10.031 Time for Payment of Administrative Fines and Costs.](#_61J2-10.031_Time_for)

[**61J2-23.001** **Time-share Resale Listing Agreement Disclosures.**](#_61J2-23.001_Time-share_Resale)

[**61J2-23.002 Time-share Resale Contract Disclosures.**](#_61J2-23.002_Time-share_Resale)

[**61J2-24.001** **Disciplinary Guidelines.**](#_61J2-24.001_Disciplinary_Guidelines)

(1) VIOLATIONS.—

(a) A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083.

(b) A person licensed as a sales associate may not operate as a broker or operate as a sales associate for any person not registered as her or his employer.

(c) A broker may not employ, or continue in employment, any person as a sales associate who is not the holder of a valid and current license as sales associate; but a license as sales associate may be issued to a person licensed as an active broker, upon request and surrender of the license as broker, without a fee in addition to that paid for the issuance of the broker’s active license.

(d) A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; and no real estate sales associate, whether the holder of a valid and current license or not, shall commence or maintain any action for a commission or compensation in connection with a real estate brokerage transaction against any person except a person registered as her or his employer at the time the sales associate performed the act or rendered the service for which the commission or compensation is due.

(e) A person may not commit any conduct or practice set forth in s. 475.25(1)(b), (c), (d), or (h).

(f) A person may not make any false affidavit or affirmation intended for use as evidence by or before the commission or a member thereof, or by any of its authorized representatives, nor may any person give false testimony under oath or affirmation to or before the commission or any member thereof in any proceeding authorized by this chapter.

(g) A person may not fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this chapter, unless because of facts that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may a person who is present before the commission or a member thereof or one of its authorized representatives acting under authority of this chapter refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the commission, the member, or such representative, or by any person by the authority of such officer or appointee; nor may any person, so being present, conduct herself or himself in a disorderly, disrespectful, or contumacious manner.

(h) A person may not obstruct or hinder in any manner the enforcement of this chapter or the performance of any lawful duty by any person acting under the authority of this chapter or interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(i) A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

(j) A person may not operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person’s license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

(k) [See Also 61J2-5.012 Domestic Corporations.](#_61J2-5.012_Domestic_Corporations.)

[61J2-5.013 Foreign Corporation.](#_61J2-5.013_Foreign_Corporation.)

[61J2-10.034 Trade Names.](#_61J2-10.034_Trade_Names.)

A person may not knowingly conceal any information relating to violations of this chapter.

(l) A person may not undertake to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons without first being the holder of a valid and current license as a broker or sales associate pursuant to this chapter, except as provided in s. 475.011 and chapter 721.

(m) A broker or sales associate may not enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period. Further, a broker or sales associate may not use any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

(n) A person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or for the purpose of causing or inducing any other person to purchase, lease, or rent, real estate located in the state or for the purpose of causing or inducing any other person to acquire an interest in the title to real estate located in the state.

(2) PENALTIES.—Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, it is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

## 475.43 Presumptions.—

In all criminal cases, contempt cases, and other cases filed pursuant to this chapter, if a party has sold, leased, or let real estate, the title to which was not in the party when it was offered for sale, lease, or letting, or such party has maintained an office bearing signs that real estate is for sale, lease, or rental thereat, or has advertised real estate for sale, lease, or rental, generally, or describing property, the title to which was not in such party at the time, it shall be a presumption that such party was acting or attempting to act as a real estate broker, and the burden of proof shall be upon him or her to show that he or she was not acting or attempting to act as a broker or sales associate. All contracts, options, or other devices not based upon a substantial consideration, or that are otherwise employed to permit an unlicensed person to sell, lease, or let real estate, the beneficial title to which has not, in good faith, passed to such party for a substantial consideration, are hereby declared void and ineffective in all cases, suits, or proceedings had or taken under this chapter; however, this section shall not apply to irrevocable gifts, to unconditional contracts to purchase, or to options based upon a substantial consideration actually paid and not subject to any agreements to return or right of return reserved.

## 475.451 Schools teaching real estate practice.—

[See Also 61J2-2.027 Applications by Individuals.](#_61J2-2.027_Applications_by)

[61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.](#_61J2-3.008_Pre-licensing_Education)

[61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.](#_61J2-3.009_Continuing_Education)

[61J2-3.010 License Reactivation Education for Brokers and Sales Associates.](#_61J2-3.010_License_Reactivation)

[61J2-3.011 Continuing Education for School Instructors.](#_61J2-3.011_Continuing_Education)

[61J2-3.012 Equivalency for Prelicensing Education.](#_61J2-3.012_Equivalency_for)

[61J2-3.015 Notices of Satisfactory Course Completion.](#_61J2-3.015_Notices_of)

[61J2-17.009 Minimum Standard for Prelicense Course of Study.](#_61J2-17.009_Minimum_Standard)

[61J2-17.011 School Instructor Requirements and Qualifications.](#_61J2-17.011_School_Instructor)

[61J2-17.013 Interpretation of Particular Phrases.](#_61J2-17.013_Interpretation_of)

[61J2-17.016 Renewal of Instructor Permits.](#_61J2-17.016_Renewal_of)

(1) [61J2-17.014 Guest Lecturers.](#_61J2-17.014_Guest_Lecturers.)

Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, which offers or conducts any course of study in real estate practice, teaches any course prescribed by the commission as a condition precedent to licensure or renewal of licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or sales associates to pass examinations for such licensure shall, before commencing or continuing further to offer or conduct such course or courses, obtain a permit from the department and abide by the regulations imposed upon such person, school, or institution by this chapter and rules of the commission adopted pursuant to this chapter. The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

(2) An applicant for a permit to operate a proprietary real estate school or to be an instructor for a proprietary real estate school or a state institution must meet the qualifications for practice set forth in s. 475.17(1) and the following minimal requirements:

(a) [61J2-17.014 Guest Lecturers.](#_61J2-17.014_Guest_Lecturers.)

[61J2-17.015 Required Communication by School Permit Holders.](#_61J2-17.015_Required_Communication)

“School permitholder” means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor’s examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching.

(b) “School instructor” means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

1. Before commencing to provide such instruction, the applicant must certify the applicant’s competency and obtain an instructor permit by meeting one of the following requirements:

a. Hold a bachelor’s degree in a business-related subject, such as real estate, finance, accounting, business administration, or its equivalent and hold a valid broker’s license in this state.

b. Hold a bachelor’s degree, have extensive real estate experience, as defined by rule, and hold a valid broker’s license in this state.

c. Pass an instructor’s examination approved by the commission.

2. Any requirement by the commission for a teaching demonstration or practical examination must apply to all school instructor applicants.

3. The department shall renew an instructor permit upon receipt of a renewal application and fee. The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom or distance learning hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. A permit that is not renewed at the end of the permit period established by the department automatically reverts to involuntarily inactive status.

The department may require an applicant to submit names of persons having knowledge concerning the applicant and the enterprise; may propound interrogatories to such persons and to the applicant concerning the character of the applicant, including the taking of fingerprints for processing through the Federal Bureau of Investigation; and shall make such investigation of the applicant or the school or institution as it may deem necessary to the granting of the permit. If an objection is filed, it shall be considered in the same manner as objections or administrative complaints against other applicants for licensure by the department.

(3) [See Also 61J2-3.013 Distance Education Courses for Hardship Cases.](#_61J2-3.013_Distance_Education)

It is unlawful for any person, school, or institution to offer the courses described in subsection (1) or to conduct classes in such courses, regardless of the number of pupils, whether by correspondence or otherwise, without first procuring a permit, or to guarantee that its pupils will pass any examinations required for licensure, or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder.

(4) Any person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The location of classes and frequency of class meetings and the provision of distance learning courses shall be in the discretion of the school offering real estate courses, so long as such courses conform to s. 475.17(2).

(6) [61J2-3.013 Distance Education Courses for Hardship Cases.](#_61J2-3.013_Distance_Education)

Any course prescribed by the commission as a condition precedent to a person′s becoming initially licensed as a sales associate or broker may be taught by a real estate school in a classroom or via distance learning pursuant to s. [475.17](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.17.html)(2) by a currently permitted instructor from any such school. All other prescribed courses, except the continuing education course required by s.[475.182](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.182.html), shall be taught by a currently permitted school instructor personally in attendance at such course or by distance learning pursuant to s. [475.17](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.17.html). The continuing education course required by s. [475.182](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.182.html) may be taught by distance learning pursuant to s. [475.17](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.17.html) or by an equivalent correspondence course; however, any such correspondence course shall be required to have a final examination, prepared and administered by the school or course provider issuing the correspondence course. The continuing education requirements provided in this chapter do not apply to an attorney who is otherwise qualified under this chapter and who is a member in good standing of The Florida Bar.

(7) A permitholder under this section may be issued additional permits whenever it is clearly shown that the requested additional permits are necessary to the conduct of the business of a real estate school and that the additional permits will not be used in a manner likely to be prejudicial to any person, including a licensee or a permitholder under this chapter.

(8) Beginning October 1, 2006, each person, school, or institution permitted under this section is required to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.

(9) A real estate school may offer any course through distance learning if the course complies with [1](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0475/0475.html#1)s. 475.17.

## 475.4511 Advertising by real estate schools.—

[See Also 61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.](#_61J2-1.015_Exemption_of)

[61J2-10.025 Advertising.](#_61J2-10.025_Advertising.)

(1) No person representing a real estate school offering and teaching real estate courses under this chapter shall make, cause to be made, or approve any statement, representation, or act, oral, written, or visual, in connection with the operation of the school, its affiliations with individuals or entities of courses offered, or any endorsement of such, if such person knows or believes, or reasonably should know or believe, the statement, representation, or act to be false, inaccurate, misleading, or exaggerated.

(2) A school shall not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a real estate school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(3) No representative of any school or institution coming within the provisions of this chapter shall promise or guarantee employment or placement of any student or prospective student using information, training, or skill purported to be provided, or otherwise enhanced, by a course or school as an inducement to enroll in the school, unless such person offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student.

## 475.453 Rental information; contract or receipt; refund; penalty.—

[61J2-10.030 Rental Information.](#_61J2-10.030_Rental_Information.)

(1) Each broker or sales associate who furnishes a rental information list to a prospective tenant, for a fee paid by the prospective tenant, shall provide such prospective tenant with a contract or receipt, which contract or receipt contains a provision for the repayment of any amount over 25 percent of the fee to the prospective tenant if the prospective tenant does not obtain a rental. If the rental information list provided by the broker or sales associate to a prospective tenant is not current or accurate in any material respect, the full fee shall be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the return of the fee, or any part thereof, shall be made within 30 days following the day on which the real estate broker or sales associate has contracted to perform services to the prospective tenant. The contract or receipt shall also conform to the guidelines adopted by the commission in order to effect disclosure of material information regarding the service to be provided to the prospective tenant.

(2) The commission may adopt a guideline for the form of the contract or receipt required to be provided by brokers or sales associates pursuant to the provisions of subsection (1).

(3) (a) Any person who violates any provision of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) In addition to the penalty prescribed in paragraph (a), the license of any broker or sales associate who participates in any rental information transaction which is in violation of the provisions of subsection (1) shall be subject to suspension or revocation by the commission in the manner prescribed by law.

## 475.455 Exchange of disciplinary information.—

The commission shall inform the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation of any disciplinary action the commission has taken against any of its licensees. The division shall inform the commission of any disciplinary action the division has taken against any broker or sales associate registered with the division.

## 475.482 Real Estate Recovery Fund.—

There is created the Florida Real Estate Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Real Estate Recovery Fund shall be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in this state to have suffered monetary damages by reason of any act committed, as a part of any real estate brokerage transaction involving real property in this state, by any broker or sales associate who:

(a) Was, at the time the alleged act was committed, the holder of a current, valid, active real estate license issued under this part;

(b) Was neither the seller, buyer, landlord, or tenant in the transaction nor an officer or a director of a corporation, a member of a partnership, a member of a limited liability company, or a partner of a limited liability partnership which was the seller, buyer, landlord, or tenant in the transaction; and

(c) Was acting solely in the capacity of a real estate licensee in the transaction; provided the act was a violation proscribed in s. 475.25 or s. 475.42.

(2) The Real Estate Recovery Fund shall also be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any broker or sales associate who is required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the commission. However, in no case shall the fund be disbursed when the broker or sales associate fails to notify the commission and to diligently defend an action wherein the broker or sales associate may be required by a court of competent civil jurisdiction to pay monetary damages due to a distribution of escrow moneys which is made in compliance with an escrow disbursement order issued by the commission.

(3) A fee of $3.50 per year shall be added to the license fee for both new licenses and renewals of licenses for brokers, and a fee of $1.50 per year shall be added for new licenses and renewals of licenses for sales associates. This fee shall be in addition to the regular license fee and shall be deposited in or transferred to the Real Estate Recovery Fund. If the fund at any time exceeds $1 million, collection of special fees for this fund shall be discontinued at the end of the licensing renewal cycle. Such special fees shall not be reimposed unless the fund is reduced below $500,000 by disbursement made in accordance with this chapter.

(4) In addition, all moneys collected from fines imposed by the commission and collected by the department shall be transferred into the Real Estate Recovery Fund.

## 475.483 Conditions for recovery; eligibility.—

(1) Any person is eligible to seek recovery from the Real Estate Recovery Fund if:

(a) Such person has received a final judgment in a court of competent civil jurisdiction in this state against an individual broker or sales associate in any action wherein the cause of action was based on a real estate brokerage transaction. If such person is unable to secure a final judgment against a licensee due to the death of the licensee, the commission may waive the requirement for a final judgment. The filing of a bankruptcy petition by a broker or sales associate does not relieve a claimant from the obligation to obtain a final judgment against the licensee. In this instance, the claimant must seek to have assets involving the real estate transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent civil jurisdiction in this state. If, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee, the commission may waive the requirement for a final judgment.

(b) At the time the action was commenced, such person gave notice thereof to the commission by certified mail; except that, if no notice has been given to the commission, the claim can still be honored if, in the opinion of the commission, the claim is otherwise valid.

(c) A claim for recovery is made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence. In no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim.

(d) 1. Such person has caused to be issued a writ of execution upon such judgment, and the person has executed an affidavit showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor’s property pursuant to such execution was insufficient to satisfy the judgment; or

2. If such person is unable to comply with subparagraph 1. for a valid reason to be determined by the commission, such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by her or his search the person has discovered no property or assets or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment.

(e) Any amounts recovered by such person from the judgment debtor, or from any other source, have been applied to the damages awarded by the court.

(f) Such person is not a person who is precluded by this act from making a claim for recovery.

(g) Such person has executed an affidavit showing that the final judgment is not on appeal or, if it was the subject of an appeal, that the appellate proceedings have concluded and the outcome of the appeal.

(2) A person is not qualified to make a claim for recovery from the Real Estate Recovery Fund, if:

(a) Such person is the spouse of the judgment debtor or a personal representative of such spouse;

(b) Such person is a licensed broker or sales associate who acted as a single agent or transaction broker in the transaction that is the subject of the claim;

(c) Such person’s claim is based upon a real estate transaction in which the licensed broker or sales associate was the owner of or controlled the property involved in the transaction; in which the licensee was dealing for the licensee’s own account; or in which the licensee was not acting as a broker or sales associate;

(d) Such person’s claim is based upon a real estate transaction in which the broker or sales associate did not hold a valid, current, and active license at the time of the real estate transaction; or

(e) The judgment is against a real estate brokerage corporation, partnership, limited liability company, or limited liability partnership.

(3) If the claim is of the type described in s. 475.482(2), the commission shall pay the defendant’s reasonable attorney fees and court costs and, if the plaintiff prevails in court, the plaintiff’s reasonable attorney fees and court costs.

## 475.4835 Commission powers upon notification of commencement of action.—

When the commission receives certified notice of any action, as required by s. 475.483(1)(b), the commission may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida.

## 475.484 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 475.482(1) or (2) may apply to the commission to cause payment to be made to such person from the Real Estate Recovery Fund:

(a) Under s. 475.482(1), in an amount equal to the unsatisfied portion of such person’s judgment or $50,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages. Except as provided in s. 475.483, treble damages, court costs, attorney fees, and interest shall not be recovered from the fund.

(b) Under s. 475.482(2), in an amount equal to the judgment against the broker or sales associate or $50,000, whichever is less.

(2) Upon receipt by a claimant under paragraph (1)(a) of payment from the Real Estate Recovery Fund, the claimant shall assign her or his additional right, title, and interest in the judgment, to the extent of such payment, to the commission, and thereupon the commission shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment by the commission, to the extent of the right, title, and interest of the commission therein, shall be for the purpose of reimbursing the Real Estate Recovery Fund.

(3) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to $50,000, regardless of the number of claimants or parcels of real estate involved in the transaction.

(4) Payments for claims based upon judgments against any one broker or sales associate may not exceed, in the aggregate, $150,000.

(5) If at any time the moneys in the Real Estate Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the commission shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by the commission. However, if the total claims approved at any one commission meeting exceed the aggregate amount established in subsection (4) against any one broker or sales associate, the claims approved on that day shall be prorated.

(6) All payments and disbursements from the Real Estate Recovery Fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department.

(7) Upon the payment of any amount from the Real Estate Recovery Fund in settlement of a claim in satisfaction of a judgment against a broker or sales associate as described in s. 475.482(1), the license of such broker or sales associate shall be automatically suspended upon the date of payment from the fund. The license of such broker or sales associate may not be reinstated until the licensee has repaid in full, plus interest, the amount paid from the fund. No further administrative action is necessary. A discharge of bankruptcy does not relieve a licensee from the penalties and disabilities provided in this section, except to the extent that this subsection conflicts with 11 U.S.C. s. 525, in which case the commission may order the license not to be suspended or otherwise discriminated against.

## 475.485 Investment of the fund.—

The funds in the Real Estate Recovery Fund may be invested by the Chief Financial Officer under the same limitations as apply to investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Real Estate Recovery Fund and shall be available for the same purposes as other moneys deposited in the Real Estate Recovery Fund.

## 475.486 Rules; violations.—

(1) The commission shall adopt such rules as are necessary to effect the efficient administration of ss. 475.482-475.486.

(2) It is unlawful for any person or the person’s agent to file with the commission any notice, statement, or other document required under the provisions of ss. 475.482-475.486 which is false or contains any material misstatement of fact. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## 475.5015 Brokerage business records.—

[61J2-14.012 Broker’s Records.](#_61J2-14.012_Broker’s_Records.)

Each broker shall keep and make available to the department such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. If any brokerage record has been the subject of or has served as evidence for litigation, relevant books, accounts, and records must be retained for at least 2 years after the conclusion of the civil action or the conclusion of any appellate proceeding, whichever is later, but in no case less than a total of 5 years as set above. Disclosure documents required under ss. 475.2755 and 475.278 shall be retained by the real estate licensee in all transactions that result in a written contract to purchase and sell real property.

## 475.5016 Authority to inspect and audit.—

Duly authorized agents and employees of the department shall have the power to inspect and audit in a lawful manner at all reasonable hours any broker or brokerage office licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

## 475.5017 Injunctive relief; powers.—

(1) Appropriate civil action may be brought by the department in circuit court to enjoin a broker from engaging in, or continuing, a violation of this part or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound and appoint one or more receivers for the property and business of the broker, including books, papers, documents, and records pertaining thereto, or as much thereof as the court may deem reasonably necessary to prevent violations of the law or injury to the public through, or by means of, the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as is, from time to time, conferred upon her or him by the court. In any such action, the court may issue an order staying all pending civil actions and the court, in its discretion, may require that all civil actions be assigned to the circuit court judge who appointed the receiver.

(2) All expenses of the receiver shall be paid out of the assets of the brokerage firm upon application to and approval by the court. If the assets are not sufficient to pay all the expenses of the receiver, the court may order disbursement from the Real Estate Recovery Fund, which may not exceed $100,000 per receivership.

## 475.5018 Facsimile signatures or writing accepted.—

When any act performed under this part must be performed in writing or acknowledged with a signature, the provision of an instrument or writing by electronic means or facsimile, including a signature transmitted by electronic means or facsimile, is binding and sufficient.

# PART II APPRAISERS

## 475.610 Purpose.—

The Legislature deems it necessary in the interest of the public welfare to regulate real estate appraisers in this state.

## 475.611 Definitions.—

(1) As used in this part, the term:

(a) “Appraisal” or “appraisal services” means the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

2. “Analysis assignment” denotes appraisal services that relate to the employer’s or client’s individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.

3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser’s appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser’s opinion of value.

(b) “Appraisal Foundation” or “foundation” means the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) “Appraisal management company” means a person who, within a 12-month period, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state, or 25 or more state-certified or state-licensed appraisers in two or more states, and who performs appraisal management services regardless of the use of the term “appraisal management company,” “appraiser cooperative,” “appraiser portal,” “mortgage technology company,” or other term.

(d) “Appraisal management services” means the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or

2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

(e) “Appraisal report” means any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of, identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.

(f) “Appraisal review” means the act or process of developing and communicating an opinion about the quality of another appraiser’s appraisal, appraisal report, or work.

(g) “Appraisal subcommittee” means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

(h) “Appraiser” means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(i) “Appraiser panel” means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. An appraiser is an independent contractor for purposes of this paragraph if the appraiser is treated as an independent contractor by the appraisal management company for federal income tax purposes. The term “appraiser panel” includes:

1. Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or secondary mortgage market participants in connection with covered transactions.

2. Appraisers employed by, contracted with, or otherwise retained by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(j) “Board” means the Florida Real Estate Appraisal Board established under this section.

(k) “Certified general appraiser” means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(l) “Certified residential appraiser” means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(m) “Client” means a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.

(n) Covered transaction” means a consumer credit transaction secured by the consumer’s principal dwelling.

(o) “Department” means the Department of Business and Professional Regulation.

(p) “Direct supervision” means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(q) “Evaluation” means a valuation permitted by any federal financial institutions regulatory agency appraisal regulations for transactions that do not require an appraisal, as such valuations qualify for an applicable exemption under federal law. The board shall adopt rules, as necessary, to define the term “evaluation” and the applicable exemptions under federal law.

(r) “Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. s. 1813, and regulated by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(s) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(t) “Licensed appraiser” means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(u) “Order file” means the documentation necessary to support the performance of appraisal management services.

(v) “Registered trainee appraiser” means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

(w) “Secondary mortgage market participant” means a guarantor, insurer, underwriter, or issuer of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if such investor also serves in the capacity of a guarantor, an insurer, an underwriter, or an issuer for the mortgage-backed security.

(x) “Signature” means personalized evidence indicating authentication of work performed by an appraiser and the acceptance of responsibility for the content of an appraisal, appraisal review, or appraisal consulting service or conclusions in an appraisal report.

(y) “Subsidiary” means an organization that is owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

(z) “Supervisory appraiser” means a certified residential appraiser or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, the minimum qualifications and standards required of a certified appraiser before she or he may act in the capacity of a supervisory appraiser, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

(aa) “Training” means the process of providing for and making available to a registered trainee appraiser, under direct supervision, a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical appraisal skills as determined by rule of the board.

(bb) “Uniform Standards of Professional Appraisal Practice” means the most recent standards approved and adopted by the Appraisal Standards Board of The Appraisal Foundation.

(cc) “Valuation services” means services pertaining to aspects of property value and includes such services performed by certified appraisers, registered trainee appraisers, and others.

(dd) “Work file” means the documentation necessary to support an appraiser’s analysis, opinions, and conclusions.

(2) Wherever the word “operate” or “operating” appears in this part with respect to a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser; in any order, rule, or regulation of the board; in any pleading, indictment, or information under this part; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this part as constituting or defining a registered trainee appraiser, registered appraisal management company, licensed appraiser, or certified appraiser, not including, however, any of the exceptions stated therein. A single act is sufficient to bring a person within the meaning of this subsection, and each act, if prohibited herein, constitutes a separate offense.

(3) For the purposes of service on any probable cause panel appointed pursuant to s. 455.225(4), “former board member” includes any person who is a former member of the Appraisal Subcommittee of the Florida Real Estate Commission.

## 475.612 Certification, licensure, or registration required.—

(1) A person may not use the title “certified real estate appraiser,” “licensed real estate appraiser,” or “registered trainee real estate appraiser,” or any abbreviation or words to that effect, or issue an appraisal report, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered trainee appraiser if the work is supervised and approved, and the report is signed, by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation service. Only a certified or licensed appraiser may issue an appraisal report and receive direct compensation for providing valuation services for the appraisal report. A registered trainee appraiser may only receive compensation for appraisal services from her or his authorized certified appraiser.

(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report’s content.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

(7) Notwithstanding any other provision of law, an appraiser may perform an evaluation of real property in connection with a real estate-related financial transaction, as defined by rule of the board, which is regulated by a federal financial institutions regulatory agency. The appraiser shall comply with the standards for evaluations imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. However, an evaluation may not be referred to or construed as an appraisal.

## 475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of nine members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. Two members of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two members of the board shall be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization shall not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member’s successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

(2) The board shall have, through its rules, full power to regulate the issuance of licenses, certifications, registrations, and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers.

(3) Notwithstanding s. 112.313, any member of the board who is a licensed or certified real estate appraiser and who holds an active appraiser instructor permit issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the board or the department.

## 475.614 Power of board to adopt rules and decide questions of practice; requirements for protection of appraiser’s signature.—

(1) The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon it. The board may decide questions of practice arising in the proceedings before it, having regard to this section and the rules then in force.

(2) The board shall adopt rules specifying the means by which an appraiser’s signature may be affixed to an appraisal report or other work performed by the appraiser. The rules shall include requirements for protecting the security of an appraiser’s signature and prohibiting practices that may discredit the use of an appraiser’s signature to authenticate the work performed by the appraiser.

## 475.6145 Seal.—

The board shall adopt a seal by which it shall authenticate its proceedings, records, and acts. Copies of the proceedings, records, and acts of the board, and certificates purporting to relate the facts concerning such proceedings, records, and acts, which are signed by the board chair, the custodian of such records, or any other person authorized to make such certification and which are authenticated by such seal, shall be prima facie evidence of such proceedings, records, and acts in all courts of this state.

## 475.6147 Fees.—

(1) (a) The board by rule may establish fees to be paid for application, licensing and renewal, certification and recertification, registration and reregistration, reinstatement, and recordmaking and recordkeeping.

(b) The fee for initial application of an appraiser may not exceed $150, and the combined cost of the application and examination may not exceed $300. The initial certification, registration, or license fee and the certification, registration, or license renewal fee may not exceed $150 for each year of the duration of the certification, registration, or license.

(c) The fee for initial application of an appraisal management company may not exceed $150. The initial registration and registration renewal fee may not exceed $150 for each year of the duration of the registration.

(d) The board may also establish by rule a late renewal penalty.

(e) The board shall establish fees which are adequate to ensure its continued operation. Fees shall be based on estimates made by the department of the revenue required to implement this part and other provisions of law relating to the regulation of real estate appraisers.

(2) Application and certification, registration, and license fees shall be refunded upon a determination by the board that the state is not entitled to the fees or that only a portion of the resources have been expended in the processing of the application or shall be refunded if for any other reason the application is not completely processed. The board shall implement this subsection by rule.

## 475.615 Qualifications for registration or certification.—

(1) Any person desiring to act as a registered trainee appraiser or as a certified appraiser must make application in writing to the department in such form and detail as the board shall prescribe. Each applicant must be at least 18 years of age and hold a high school diploma or its equivalent.

(2) The board is authorized to waive or modify any education, experience, or examination requirements established in this part in order to conform with any such requirements established by the Appraiser Qualifications Board of the Appraisal Foundation or any successor body recognized by federal law, including any requirements adopted on December 9, 2011. The board shall implement this section by rule.

(3) Appropriate fees, as set forth in the rules of the board pursuant to s. 475.6147, and a set of fingerprints must accompany all applications for registration or certification. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for processing to determine whether the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation to determine whether the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department to determine whether the applicant is statutorily qualified for registration or certification.

(4) In the event that the applicant is currently a registered trainee appraiser or a licensed or certified appraiser and is making application to obtain a different status of appraisal credential, should such application be received by the department within 180 days prior to through 180 days after the applicant’s scheduled renewal, the charge for the application shall be established by the rules of the board pursuant to s. 475.6147.

(5) At the time of filing an application for registration or certification, the applicant must sign a pledge indicating that upon becoming registered or certified, she or he will comply with the standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application expires 1 year after the date received by the department.

(6) All applicants must be competent and qualified to make real estate appraisals with safety to those with whom they may undertake a relationship of trust and confidence and the general public. If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant’s registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser, the applicant is deemed not to be qualified unless the applicant has met the conditions adopted by the Appraiser Qualifications Board of the Appraisal Foundation on December 9, 2011, as prescribed by rule of the board and it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

(7) No applicant seeking to become registered or certified under this part may be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

**History.**—ss. 9, 11, ch. 91-89; s. 4, ch. 91-429; s. 384, ch. 97-103; s. 24, ch. 98-250; s. 142, ch. 99-251; s. 7, ch. 2003-164; s. 84, ch. 2005-2; s. 3, ch. 2006-198; s. 18, ch. 2009-195; s. 14, ch. 2012-61; s. 42, ch. 2013-116; s. 4, ch. 2013-144.

## 475.616 Examination requirements.—To be certified as an appraiser, the applicant must demonstrate, by passing a written examination, that she or he possesses:

(1) A knowledge of technical terms commonly used in real estate appraisal.

(2) An understanding of the principles of land economics, real estate appraisal processes, reliable sources of appraising data, and problems likely to be encountered in the gathering, interpreting, and processing of data in carrying out appraisal disciplines.

(3) An understanding of the standards for the development and communication of real estate appraisals as provided in this part.

(4) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed or certified appraiser, as set forth in this part.

(5) Knowledge of the theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal.

## 475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011, by the [1](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0475/0475.html#1)Appraiser Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved qualifying education courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011, by the[1](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0475/0475.html#1)Appraiser Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved qualifying education courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) A distance learning course may be approved by the board as an option to classroom hours for satisfactory completion of the academic courses required under this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(a) A distance learning course must use a delivery method that is certified or approved by a board-authorized independent certifying organization.

(b) A distance learning course intended for use as academic education must include a written, closed-book final examination. As used in this paragraph, the term “written” refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable.

(5) Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than 5 years after the date of certification.

(6) The board may implement the provisions of this section by rule.

## 475.6171 Issuance of registration or certification.—

The registration or certification of an applicant may be issued upon receipt by the board of the following:

(1) A complete application indicating compliance with qualifications as specified in s. 475.615.

(2) Proof of successful course completion as specified in s. 475.617.

(3) Proof of experience for certification as specified in s. 475.617.

(4) If required, proof of passing a written examination as specified in s. 475.616.

(5) The board shall implement this section by rule.

## 475.6175 Registered trainee appraiser; postlicensure education required.— REPEALED 2017

## 475.618 Renewal of registration, license, certification, or instructor permit; continuing education.—

(1) (a) The department shall renew a registration, license, certification, or instructor permit upon receipt of the renewal application and proper fee. Such application shall include proof satisfactory to the board that the individual has satisfactorily completed any continuing education that has been prescribed by the board.

(b) A distance learning course or courses shall be approved by the board as an option to classroom hours as satisfactory completion of the course or courses as required by this section. The schools authorized by this section have the option of providing classroom courses, distance learning courses, or both.

(c) The board may authorize independent certification organizations to certify or approve the delivery method of distance learning courses. Certification from such authorized organizations must be provided at the time a distance learning course is submitted to the board by an accredited college, university, community college, career center, proprietary real estate school, or board-approved sponsor for content approval.

(2) The department shall adopt rules establishing a procedure for the renewal of registration, licenses, certifications, and instructor permits at least every 4 years.

(3) Any registration, license, certification, or instructor permit which is not renewed at the end of the registration, license, certification, or instructor permit period prescribed by the department shall automatically revert to inactive status.

(4) At least 60 days prior to the end of the registration, license, certification, or instructor permit period, the department shall cause to be mailed a notice of renewal and possible reversion to the last known address of the registered trainee, licensee, certificateholder, or permitholder.

## 475.619 Inactive status.—

(1) A registration, license, or certification which has become inactive may be renewed upon application to the department. The board shall prescribe by rule continuing education requirements for each year the registration, license, or certification was inactive, as a condition of renewing an inactive registration, license, or certification.

(2) Any registration, license, or certification which has been inactive for more than 4 years shall automatically expire. Once a registration, license, or certification expires, it becomes null and void without any further action by the board or department. Two years prior to the expiration of the registration, license, or certification, the department shall give notice by mail to the registered trainee, licensee, or certificateholder at her or his last known address. The board shall prescribe by rule a fee not to exceed $100 for the late renewal of an inactive registration, license, or certification. The department shall collect the current renewal fee for each renewal period in which the registration, license, or certification was inactive, in addition to any applicable late renewal fee.

(3) The board shall adopt rules relating to inactive registrations, licenses, and certifications and for the renewal of such registrations, licenses, and certifications.

## 475.620 Corporations and partnerships ineligible for licensure or certification.—

(1) A license or certification may not be issued under this part to a corporation, partnership, firm, or group. However, an appraiser licensed or certified under this part may provide an appraisal report for or on behalf of a corporation, partnership, firm, or group, if the report is prepared by, or under the personal direction of, such appraiser and is reviewed and signed by her or him.

(2) The term “state-registered trainee appraiser,” “state-licensed appraiser,” or “state-certified appraiser” may only be used to refer to an individual who is registered, licensed, or certified under this part and may not be used following or immediately in connection with the name or signature of a corporation, partnership, firm, or group, or in such manner that it could be interpreted as implying registration, licensure, or certification under this part of a corporation, partnership, firm, or group, or anyone other than an individual appraiser. Corporations, partnerships, firms, or groups which employ certified or licensed appraisers or registered trainee appraisers who provide appraisal reports, as defined by this part, may represent to the public and advertise that they offer appraisals performed by registered, licensed, or certified appraisers.

## 475.621 Registry of licensed and certified appraisers;registry of appraisal management companies.—

(1) The department shall transmit to the appraisal subcommittee, at least annually, a roster listing individuals who hold a valid state license or certification as an appraiser. The department shall transmit to the appraisal subcommittee, at least annually, a roster listing individuals or companies that hold a valid state registration as an appraisal management company.

(2) The department shall collect from such individuals who perform or seek to perform appraisals in federally related transactions an annual fee as set by rule of, and transmitted to, the appraisal subcommittee. The department shall collect from such appraisal management companies that perform or seek to perform appraisal management services in covered transactions an annual fee set by rule of the board and transmitted to the appraisal subcommittee.

(3) Notwithstanding the prohibition against requiring registration of a federally regulated appraisal management company as provided in s. [475.6235](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.6235.html)(8)(b), the board shall establish a procedure to collect from a federally regulated appraisal management company an annual fee as set by rule of the board and transmitted to the appraisal subcommittee.

## 475.622 Display and disclosure of licensure, certification, or registration.—

(1) Each appraiser registered, licensed, or certified under this part shall place her or his registration, license, or certification number adjacent to or immediately beneath the designation “state-registered trainee real estate appraiser,” “state-licensed real estate appraiser,” “state-certified residential real estate appraiser,” or “state-certified general real estate appraiser,” or their appropriate abbreviations as defined by rule, as applicable, when such term is used in an appraisal report or in a contract or other instrument used by the appraiser in conducting real property appraisal activities. The applicable designation shall be included in any newspaper, telephone directory, or other advertising medium, as defined by rule, used by the appraiser.

(2) A registered trainee appraiser or licensed or certified appraiser may not sign any appraisal report or certification or communicate same without disclosing in writing that she or he is a state-registered trainee appraiser or state-licensed, state-certified residential, or state-certified general appraiser, as applicable, even if the appraisal performed is outside of the scope of the appraiser’s registration, licensure, or certification as an appraiser.

(3) The primary or secondary supervisory appraiser of a registered trainee real estate appraiser must sign each appraisal report and certification signed by the registered trainee.

(4) The supervisory appraiser of a registered trainee real estate appraiser must disclose her or his appropriate designation and number any time the registered trainee is required to make such disclosures.

## 475.6221 Employment of and by registered trainee real estate appraisers.—

(1) A registered trainee real estate appraiser must perform appraisal services under the direct supervision of a certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional certified appraisers as secondary supervisory appraisers. A secondary supervisory appraiser must be affiliated with the same firm or business as the primary supervisory appraiser and the primary or secondary supervisory appraiser must have the same business address as the registered trainee real estate appraiser. The primary supervisory appraiser must notify the Division of Real Estate of the name and address of any primary and secondary supervisory appraiser for whom the registered trainee will perform appraisal services, and must also notify the division within 10 days after terminating such relationship. Termination of the relationship with a primary supervisory appraiser automatically terminates the relationship with the secondary supervisory appraiser.

(2) A registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser.

(3) A supervisory appraiser may not be employed by a trainee or by a corporation, partnership, firm, or group in which the trainee has a controlling interest.

## 475.6222 Supervision and training of registered trainee appraisers.—

The primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.

## 475.623 Registration of firm or business name and office location.—

Each appraiser registered, licensed, or certified under this part shall furnish in writing to the department each firm or business name and address from which she or he operates in the performance of appraisal services. Each appraiser must notify the department of any change of firm or business name and any change of address within 10 days on a form provided by the department.

## 475.6235 Registration of appraisal management companies required; exemptions.—

(1) A person may not engage, or offer to engage, in appraisal management services for compensation in this state, or advertise or represent herself or himself as an appraisal management company, unless the person is registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.

(2) An application for registration must be submitted to the department in the format prescribed by the department and must include, at a minimum, the following:

(a) The firm or business name under which the appraisal management company conducts business in this state. The appraisal management company must notify the department of any change in the firm or business name, on a form provided by the department, within 10 days after such change.

(b) The mailing address, street address, and telephone number of the appraisal management company’s principal business location. The appraisal management company must notify the department of any change in the mailing or street address, on a form provided by the department, within 10 days after such change.

(c) The appraisal management company’s federal employer identification number.

(d) The appraisal management company’s type of business organization, such as a corporation, partnership, limited liability company, or sole proprietorship.

(e) A statement as to whether the appraisal management company, if incorporated, is a domestic or foreign corporation, the company’s date of incorporation, the state in which the company was incorporated, its charter number, and, if it is a foreign corporation, the date that the company first registered with the Department of State to conduct business in this state.

(f) The full name, street address, telephone number, corporate title, and social security number or federal employer identification number of any person who possesses the authority, directly or indirectly, to direct the management or policies of the appraisal management company, whether through ownership, by contract, or otherwise, including, but not limited to:

1. Each officer and director if the appraisal management company is a corporation.

2. Each general partner if the appraisal management company is a partnership.

3. Each manager or managing member if the appraisal management company is a limited liability company.

4. The owner if the appraisal management company is a sole proprietorship.

5. Each other person who, directly or indirectly, owns or controls 10 percent or more of an ownership interest in the appraisal management company.

(g) The firm or business name under which any person listed in paragraph (f) conducted business as an appraisal management company within the 5 years preceding the date of the application.

(h) The appraisal management company’s registered agent for service of process in this state.

(3) Appropriate fees, as set forth in the rules of the board pursuant to s. 475.6147, and a complete set of fingerprints for each person listed in paragraph (2)(f) must accompany all applications for registration. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprints to determine whether the person has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprints to determine whether the person has a criminal history record. The information obtained by the processing of fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining whether the appraisal management company is statutorily qualified for registration.

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with applicable standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application expires 1 year after the date received.

(5) Each person listed in paragraph (2)(f) must be competent and qualified to engage in appraisal management services with safety to the general public and those with whom the person may undertake a relationship of trust and confidence. If any person listed in paragraph (2)(f) has been denied registration, licensure, or certification as an appraiser or has been disbarred, or if the person’s registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, any possession or district of the United States, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result under this part, or if the person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining her or his registration, license, or certification under this part had the person then been a registered trainee appraiser or a licensed or certified appraiser, the person shall be deemed not to be qualified to be registered.

(6) An applicant seeking to become registered under this part as an appraisal management company may not be rejected solely by virtue of membership or lack of membership of any person listed in paragraph (2)(f) or any employee of the company in any particular appraisal organization.

(7) The department shall renew the registration of an appraisal management company upon receipt of the renewal application and the proper fee. The department shall adopt rules establishing a procedure for renewal of the registration of an appraisal management company at least every 4 years.

(8) This section does not apply to:

(a) A financial institution, as defined in s. 655.005, which owns and operates an internal appraisal office, business unit, or department; or

(b) A federally regulated appraisal management company.

## 475.624 Discipline of appraisers.—

The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(1) Has violated any provision of this part or s. 455.227(1); however, any appraiser registered, licensed, or certified under this part is exempt from s. 455.227(1)(i).

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee appraiser or licensed or certified appraiser that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee appraiser or licensed or certified appraiser, or was an identified member of the general public.

(3) Has advertised services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(4) Has violated any provision of this part or any lawful order or rule issued under this part or chapter 455.

(5) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the activities of a registered trainee appraiser or licensed or certified appraiser or that involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.

(8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice that shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(11) Has made or filed a report or record, either written or oral, that the registered trainee appraiser or licensed or certified appraiser knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing; or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those that are signed or presented in the capacity of a registered trainee appraiser or licensed or certified appraiser.

(12) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(13) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(14) Has violated any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal.

(15) Has failed or refused to exercise reasonable diligence in developing an appraisal or preparing an appraisal report.

(16) Has failed to communicate an appraisal without good cause.

(17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she or he operates as a registered trainee appraiser or licensed or certified appraiser.

## 475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration or renewal registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(a) Has violated any provision of this part or s. 455.227(1); however, any appraisal management company registered under this part is exempt from s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the appraisal management company that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the appraisal management company or was an identified member of the general public.

(c) Has advertised services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(d) Has violated any provision of this part or any lawful order or rule issued under this part or chapter 455.

(e) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the activities of an appraisal management company or that involves moral turpitude or fraudulent or dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(f) Has had a registration, license, or certification as an appraiser or a registration as an appraisal management company revoked, suspended, or otherwise acted against; has been disbarred; has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(g) Has become temporarily incapacitated from acting as an appraisal management company with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental derangement; however, suspension of a registration in such cases shall only be for the period of such incapacity.

(h) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(i) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(j) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found guilty of a course of conduct or practice that shows that she or he is incompetent, negligent, dishonest, or untruthful to an extent that those with whom she or he may sustain a confidential relationship may not safely do so.

(k) Has made or filed a report or record, either written or oral, that the appraisal management company knows to be false; has willfully failed to file a report or record required by state or federal law; has willfully impeded or obstructed such filing; or has induced another person to impede or obstruct such filing. However, such reports or records shall include only those that are signed or presented in the capacity of an appraisal management company.

(l) Has obtained or attempted to obtain a registration, license, or certification by means of knowingly making a false statement, submitting false information, refusing to provide complete information in response to an application question, or engaging in fraud, misrepresentation, or concealment.

(m) Has paid money or other valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration, license, or certification under this section.

(n) Has instructed an appraiser to violate any standard of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

(o) Has engaged in the development of an appraisal or the preparation of an appraisal report, unless the appraisal management company is owned or controlled by certified appraisers.

(p) Has failed to communicate an appraisal without good cause.

(q) Has accepted an appraisal assignment if the employment itself is contingent upon the appraisal management company reporting a predetermined result, analysis, or opinion or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(r) Has failed to timely notify the department of any change in principal business location as an appraisal management company.

(s) Has influenced or attempted to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or any other means, including, but not limited to:

1. Withholding or threatening to withhold timely payment for an appraisal, unless such nonpayment is based upon specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement.

2. Withholding or threatening to withhold future business from an appraiser.

3. Promising future business, promotions, or increased compensation for an appraiser, whether the promise is express or implied.

4. Conditioning a request for appraisal services or the payment of an appraisal fee, salary, or bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser.

5. Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser’s completion of appraisal services.

6. Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

7. Providing to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits.

8. Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser.

9. Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

10. Any other act or practice that impairs or attempts to impair an appraiser’s independence, objectivity, or impartiality.

(t) Has altered, modified, or otherwise changed a completed appraisal report submitted by an appraiser to an appraisal management company.

(u) Has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.

(v) Has required or attempted to require an appraiser to sign any indemnification agreement that would require the appraiser to hold harmless the appraisal management company or its owners, agents, employees, or independent contractors from any liability, damage, loss, or claim arising from the services performed by the appraisal management company or its owners, agents, employees, or independent contractors and not the services performed by the appraiser.

(w) Has required or attempted to require a client to sign any indemnification agreement that would require the client to hold harmless the appraisal management company or its owners, agents, or employees from any liability, damage, loss, or claim arising from the services performed by an appraiser.

(2) The board may reprimand an appraisal management company, conditionally or unconditionally suspend or revoke any registration of an appraisal management company issued under this part, or impose administrative fines not to exceed $5,000 for each count or separate offense against any such appraisal management company if the board determines that the appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following acts:

(a) Committing any act in violation of this part.

(b) Violating any rule adopted by the board under this part.

(c) Obtaining a registration of an appraisal management company by fraud, misrepresentation, or deceit.

(3) This section does not prohibit an appraisal management company from requesting an appraiser to:

(a) Provide additional information about the basis of a valuation, including consideration of additional comparable data; or

(b) Correct objective factual errors in an appraisal report.

## 475.625 Final orders.—

The board may publish and distribute, in such manner and form as it may prescribe, any of its final orders or decisions made under this section, after they become final by lapse of time or upon affirmance on appeal, or opinions of appellate courts for the guidance of appraisers, appraiser users, and the public. The board may also publish or withhold from publication the names and addresses of any parties concerned. This section shall not be construed to affect compliance with chapter 119.

## 475.626 Violations and penalties.—

(1) A person may not:

(a) Operate or attempt to operate as a registered trainee appraiser, a licensed or certified appraiser, or an appraisal management company without being the holder of a valid and current registration, license, or certification.

(b) If an appraisal management company, commit any conduct or practice set forth in s. 475.6245.

(c) Make any false affidavit or affirmation intended for use as evidence by or before the board or any member thereof, or by any of its authorized representatives, nor may any person give false testimony under oath or affirmation to or before the board or any member thereof in any proceeding authorized by this section.

(d) Fail or refuse to appear at the time and place designated in a subpoena issued with respect to a violation of this section, unless such failure to appear is the result of facts or circumstances that are sufficient to excuse appearance in response to a subpoena from the circuit court; nor may a person who is present before the board or a member thereof or one of its authorized representatives acting under authority of this section refuse to be sworn or to affirm or fail or refuse to answer fully any question propounded by the board, the member, or such representative, or by any person by the authority of such officer or appointee.

(e) Obstruct or hinder in any manner the enforcement of this section or the performance of any lawful duty by any person acting under the authority of this section, or interfere with, intimidate, or offer any bribe to any member of the board or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this section.

(f) Knowingly conceal any information relating to violations of this section.

(2) A person who violates any provision of subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except when a different punishment is prescribed by this section. This section does not prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, a criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

## 475.627 Appraisal course instructors.—

(1) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee appraiser, licensed appraiser, or certified residential appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in a career center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

(a) Hold a valid certification as a residential real estate appraiser in this or any other state.

(b) Pass an appraiser instructor’s examination which shall test knowledge of residential appraisal topics.

(2) Where the course or courses to be taught are prescribed by the board or approved precedent to registration, licensure, certification, or renewal as a registered trainee appraiser, licensed appraiser, or certified appraiser, before commencing to instruct noncredit college courses in a college, university, or community college, or courses in a career center or proprietary real estate school, a person must certify her or his competency by meeting one of the following requirements:

(a) Hold a valid certification as a general real estate appraiser in this or any other state.

(b) Pass an appraiser instructor’s examination which shall test knowledge of residential and nonresidential appraisal topics.

(3) Possession of a permit to teach prescribed or approved appraisal courses does not entitle the permitholder to teach any courses outside the scope of the permit.

## 475.628 Professional standards for appraisers registered, licensed, or certified under this part.—

(1) The board shall adopt rules establishing standards of professional practice which meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Each appraiser registered, licensed, or certified under this part must comply with the rules. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation are binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.

(2) The board may adopt rules establishing standards of professional practice other than standards adopted by the Appraisal Standards Board of the Appraisal Foundation for nonfederally related transactions. The board shall require that when performing an appraisal or appraisal service for any purpose other than a federally related transaction, an appraiser must comply with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, and other requirements as determined by rule of the board. An assignment completed using alternate standards does not satisfy the experience requirements under s. [475.617](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0475/Sections/0475.617.html)unless the assignment complies with the standards adopted by the Appraisal Standards Board of the Appraisal Foundation.

## 475.629 Retention of records.—

An appraiser registered, licensed, or certified under this part shall prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting assignment. An appraisal management company registered under this part shall prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. The work file and the order file shall be retained for 5 years or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater. The work file must contain original or true copies of any contracts engaging the appraiser’s or appraisal management company’s services, appraisal reports, and supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services and all other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board. The order file must contain original or true copies of any contracts engaging the appraiser’s services, the appraisal reports, any engagement materials or instructions from the client, and all other documents required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board. Notwithstanding the foregoing, while general contracts and materials pertaining to impaneling of an appraiser by an appraisal management company shall be retained under this section, such contracts and materials are not required to be maintained within the order file. Except as otherwise specified in the Uniform Standards of Professional Appraisal Practice, the period for retention of the records applicable to each engagement of the services of the appraiser or appraisal management company runs from the date of the submission of the appraisal report to the client. Appraisal management companies shall also retain the company accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative rules adopted by the board. These records must be made available by the appraiser or appraisal management company for inspection and copying by the department upon reasonable notice to the appraiser or company. If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater.

## 475.6295 Authority to inspect.—

Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any appraisal management company, appraiser or appraisal office certified, registered, or licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

## 475.630 Temporary practice.—

(1) The board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state, if:

(a) The property to be appraised is part of a federally related transaction.

(b) The appraiser’s business is of a temporary nature.

(c) The appraiser registers with the board.

(d) The person requesting recognition of a license or certification as an appraiser issued by another state is a nonresident of Florida.

(2) In order to register with the board, the appraiser must:

(a) Pay any required fee as established by rule.

(b) Provide, or cause the state where the applicant may be licensed or certified to furnish, proof of licensure or certification along with the copies of the records of any disciplinary actions taken against the applicant’s license or certification in that or other jurisdictions.

(c) Agree in writing to cooperate with any investigation initiated under this part by promptly supplying such documents that any authorized representative of the department may request. If the department sends a notice by certified mail to the last known address of a nonresident appraiser to produce documents or to appear in conjunction with an investigation and the nonresident appraiser fails to comply with that request, the board may impose on that nonresident appraiser any disciplinary action or penalty authorized under this part.

(d) Sign a notarized statement that the applicant has read this section and all applicable rules and agrees to abide by these provisions in all appraisal activities.

## 475.631 Nonresident licenses and certifications.—

(1) Any resident state-certified appraiser who becomes a nonresident shall, within 60 days, notify the board of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.624.

(2) All nonresident applicants, certified appraisers, and licensees shall comply with all requirements of board rules and this part. The board may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary for the regulation of nonresident certified appraisers and licensees.

# PART III COMMERCIAL REAL ESTATE SALES COMMISSION LIEN ACT

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## 475.700 Popular name.—

Sections 475.700-475.719 may be cited as the “Commercial Real Estate Sales Commission Lien Act.”

## 475.701 Definitions.—

As used in this part:

(1) “Broker” has the same meaning as in s. 475.01.

(2) “Brokerage agreement” means a written contract entered into on or after the effective date of this act between an owner of commercial real estate and a broker that obligates the owner to pay a commission to the broker for licensed services provided by the broker relating to the sale or disposition of the commercial real estate as specified in the contract.

(3) “Closing” means the delivery, exchange, and release of documents and funds for the completion of a transaction for the disposition of commercial real estate.

(4) “Closing agent” means the person who receives documents and funds for recording and disbursement in closing a transaction for the disposition of commercial real estate.

(5) “Commercial real estate” means a fee simple interest or other possessory estate in real property, except an interest in real property that is:

(a) Improved with one single-family residential unit or one multifamily structure containing one to four residential units;

(b) Unimproved and the maximum permitted development is one to four residential units under any restrictive covenants, zoning regulations, or comprehensive plan applicable to that real property; or

(c) Improved with single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether these units may be a part of a larger building or parcel containing more than four residential units.

(6) “Commission” means any fee or other compensation that an owner agrees to pay a broker for licensed services as specified in a brokerage agreement.

(7) “Commission notice” means the written notice claiming a commission made by a broker under s. 475.705.

(8) “Days” means calendar days, but if a period would end on a day other than a business day, then the last day of that period shall instead be the next business day.

(9) “Disposition” means a voluntary conveyance or transfer of the title to or other ownership interest in any commercial real estate specified in a brokerage agreement. A disposition does not include a transfer pursuant to a foreclosure sale and does not include a lease.

(10) “Disputed reserved proceeds” means the portion of the owner’s net proceeds reserved by a closing agent under s. 475.709 that the owner disputes the broker’s right to receive under s. 475.709(5).

(11) “Owner” means a person that is vested with fee simple title or a possessory estate in commercial real estate.

(12) “Owner’s net proceeds” means the gross sales proceeds that the owner is entitled to receive from the disposition of any commercial real estate specified in a brokerage agreement, less all of the following:

(a) The amount of money secured by any encumbrance, claim, or lien that has priority over the recorded commission notice as provided in s. 475.715.

(b) Any costs incurred by the owner to close the disposition, including, but not limited to, real estate transfer tax, title insurance premiums, ad valorem taxes and assessments, and escrow fees payable by the owner pursuant to an agreement with the buyer.

(13) “Real property” means one or more parcels or tracts of land located in this state, including any appurtenances and improvements.

## 475.703 Broker’s lien for sales commission.—

(1) A broker has a lien upon the owner’s net proceeds from the disposition of commercial real estate for any commission earned by the broker with respect to that disposition pursuant to a brokerage agreement. The lien upon the owner’s net proceeds pursuant to this part for a broker’s commission is a lien upon personal property, attaches to the owner’s net proceeds only, and does not attach to any interest in real property.

(2) For purposes of this part, a commission is earned on the earlier of the date that:

(a) An event occurs under the brokerage agreement that defines when the commission is earned; or

(b) The owner enters into a contract for the disposition of all or part of the commercial real estate specified in the brokerage agreement, provided that a commission would be payable to the broker pursuant to the brokerage agreement if the disposition occurs under that contract.

(3) For the purposes of this part, a commission is payable at the time provided in the brokerage agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, a broker may not enforce a lien for that commission under this part.

(4) A broker’s lien for commission arising under this part:

(a) Belongs to the broker named in the brokerage agreement and not to an employee or independent contractor of the broker.

(b) Cannot be assigned voluntarily or by operation of law and may not be enforced by a person other than the broker.

(c) Cannot be waived before the commission is earned.

(d) Cannot be waived by any person other than the broker, regardless of whether that person may execute and bind the broker to a brokerage agreement.

(5) A broker shall disclose to the owner at or before the time the owner executes the brokerage agreement that this part creates lien rights for a commission earned by the broker that are not waivable before the commission is earned by the broker. A broker may not enforce a lien under this part for a commission earned under a brokerage agreement for which the disclosure required by this subsection was not made. A disclosure in substantially the following form shall be sufficient: “The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker’s commission. The broker’s lien rights under the act cannot be waived before the commission is earned.”

## 475.705 Contents of commission notice; delivery to owner and closing agent.—

(1) A commission notice made by a broker with respect to a commission claimed under this part shall be in writing, shall be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public, and shall include the following:

(a) The name of the owner of the commercial real estate who is obligated to pay the claimed commission.

(b) The legal description of the commercial real estate.

(c) The name, mailing address, telephone number, and license number of the broker.

(d) The effective date of the brokerage agreement.

(e) The amount of the commission claimed by the broker, which may be stated in a dollar amount or may be stated in the form of a formula determining the amount, such as a percentage of the sales price.

(f) A statement under penalty of perjury that the broker has read the commission notice, knows its contents, believes the same to be true and correct, and makes the commission claim pursuant to the brokerage agreement described in the notice.

(g) A statement that the commission notice or a copy thereof has been delivered to the owner and that the commission notice may be recorded in the public records of the county or counties where the commercial real estate is located.

(h) A statement that this part provides that if the owner disputes the claimed commission the owner shall notify the closing agent of such dispute not later than 5 days after the closing, or the owner will be deemed to have confirmed the commission and this part will require the closing agent to pay the commission to the broker from the owner’s net proceeds from the disposition of the commercial real estate.

(2) A commission notice in substantially the following form shall be sufficient for purposes of subsection (1):

BROKER’S COMMISSION NOTICE UNDER  
FLORIDA COMMERCIAL REAL ESTATE  
SALES COMMISSION LIEN ACT

Notice is hereby given pursuant to the Florida Commercial Real Estate Sales Commission Lien Act, part III of chapter 475, Florida Statutes (the “act”), that the undersigned real estate broker is entitled to receive a sales commission in the amount set forth below from the owner named below pursuant to the terms of a written brokerage commission agreement regarding the commercial real estate described below, and the undersigned broker claims a lien under the act against the owner’s net proceeds from the disposition of the commercial real estate. The act and this commission notice do not create a lien against the commercial real estate itself, but only against the owner’s net proceeds.

1. Name of the owner who is obligated to pay the commission:

2. Legal description of the commercial real estate:

3. Name, mailing address, telephone number, and Florida broker license number of the undersigned broker:

4. Effective date of the written brokerage commission agreement between the owner and the broker under which the commission is or will be payable:      ,     .

5. Amount of commission claimed by the undersigned broker:

$    , or    percent of sales price, or

[specify other formula for determination of commission amount]:  
      .

6. The undersigned broker, under penalty of perjury, hereby swears or affirms that the undersigned broker has read this commission notice, knows its contents and believes the same to be true and correct, and that the undersigned broker is making this commission claim pursuant to the written brokerage commission agreement described in this commission notice.

7. The undersigned broker confirms that this commission notice or a copy thereof has been delivered to the owner.

Signed:   (broker)

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this      day of     ,    ,  
by           .

Signed:   (notary public)

WARNING TO OWNER: The act provides that if you dispute the commission claimed in this commission notice, you must notify the closing agent of the dispute no later than 5 days after the closing. If you fail to notify the closing agent before that date that you dispute the commission, you will be deemed to have confirmed the commission and the act will require the closing agent to pay the commission to the broker from your net proceeds from the disposition of the commercial real estate.

This commission notice may be recorded in the public records of the county or counties where the commercial real estate is located.

(3) Subject to subsection (4), if a broker wishes to enforce a lien for a commission under this part, the broker shall, within 30 days after a commission is earned by the broker pursuant to s. 475.703(2) and at least 1 day before the closing, deliver a copy of the commission notice to:

(a) The owner of the commercial real estate specified in the brokerage agreement.

(b) The closing agent designated to close the transaction for the disposition of the commercial real estate, if the broker then knows the identity of the closing agent. If the identity of the closing agent thereafter becomes known to the broker, then the broker shall deliver a copy of the commission notice to the closing agent within 3 days after the broker acquires such knowledge and at least 1 day before the closing.

(4) Except as provided in this subsection, a broker who fails to deliver a copy of a commission notice as required under subsection (3) within the period specified therein may not enforce a lien for the commission under this part. If a broker fails to deliver a copy of the commission notice within said period solely because the owner entered into a contract for the disposition of the commercial real estate without the knowledge of the broker, the broker may enforce a lien for the commission under this part if:

(a) The copy of the commission notice is delivered to the owner and the closing agent before the closing agent disburses the owner’s net proceeds to the owner.

(b) The broker executes and delivers to the closing agent a sworn affidavit stating that the copy of the commission notice was not delivered within the time period specified in subsection (3) solely because the owner entered into a contract for the disposition of the commercial real estate without the knowledge of the broker.

Notwithstanding the provisions of this subsection, a broker who fails to deliver a copy of a commission notice to the owner and the closing agent before the disbursement of the owner’s net proceeds may not enforce a lien for the commission under this part, and the delivery of a copy of a commission notice after such disbursement is ineffective under this part.

## 475.707 Recording commission notice; effectiveness.—

(1) After a broker delivers the copies of a commission notice as provided in s. 475.705, the broker may record the commission notice in the public records maintained by the clerk of court in the county or counties in which the commercial real estate is located.

(a) Subject to the limitation in paragraph (b), the broker’s lien created by this part against the owner’s net proceeds is perfected by such recording of the commission notice and takes priority pursuant to this part as of the date of the recording of the commission notice. The priority of the lien does not relate back to the date of the brokerage agreement.

(b) The recording of the commission notice shall not constitute constructive notice to a closing agent unless the commission notice has been of record for at least 60 days.

(2) A recorded commission notice is effective under this part only with respect to dispositions made by the owner named in the commission notice, and after the recordation of a deed from the owner conveying the commercial real estate specified in the commission notice to a bona fide purchaser for value, the commission notice is ineffective with respect to any subsequent dispositions of that commercial real estate.

(3) A commission notice recorded under this part expires 1 year after the date of recording, unless the owner remains obligated to pay a commission to the broker after the expiration date of the commission notice and the broker records an extension notice in the same public records within the last 60 days before such expiration date. An extension notice shall refer to the recording information of the original commission notice, shall state that the owner remains obligated to pay a commission to the broker, and shall include the information and be executed in the manner as required by s. 475.705(1) for the original commission notice. A timely recorded extension notice shall extend the expiration date of the original recorded commission notice by 1 additional year. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(4) The delivery or recording of a commission notice or the enforcement of a commission claim by a broker under this part does not relieve the owner from the owner’s obligation to close a disposition transaction for any commercial real estate.

(5) Whenever a commission notice is recorded and a condition or event occurs or fails to occur that would preclude the broker from receiving the claimed commission under the terms of the brokerage agreement, including the filing of a commission notice in a manner that does not comply with this part, the broker shall, within 7 days following demand by the owner, record a written release of the commission notice in the public records of the county where the commission notice was recorded.

(6) If a broker records a commission notice pursuant to this section and the claimed commission is paid or the commission notice is otherwise discharged or satisfied pursuant to this part, the broker shall, within 7 days after the commission is paid or the commission notice is otherwise discharged or satisfied, record a written release of the commission notice in the public records of the county where the commission notice was recorded.

## 475.709 Duties of closing agent; reservation of owner’s net proceeds.—

(1) (a) The closing agent shall reserve from the owner’s net proceeds an amount equal to the commission claimed by the broker in the commission notice if, before the closing agent disburses the owner’s net proceeds from the closing of a disposition of commercial real estate:

1. A commission notice pertaining to the commercial real estate is delivered to the closing agent in accordance with s. 475.705;

2. A commission notice pertaining to the commercial real estate has been recorded for at least 60 days pursuant to s. 475.707 and has not expired or been released or canceled as provided in this part; or

3. The closing agent has actual knowledge of a commission notice pertaining to the commercial real estate that has been recorded pursuant to s. 475.707 and has not expired or been released or canceled as provided in this part.

(b) If the owner’s net proceeds are insufficient to pay the full amount of the claimed commission, the closing agent shall reserve the entire amount of the owner’s net proceeds. The closing agent shall release the reserved proceeds only in accordance with the provisions of this part.

(2) (a) The closing agent designated to close a transaction for the disposition of commercial real estate may require the owner of the commercial real estate to deliver a sworn affidavit identifying the commercial real estate and disclosing to the closing agent:

1. Whether the owner is a party to any brokerage agreement under which any broker or brokers may have a right to claim a commission from the disposition of the commercial real estate.

2. The name, mailing address, and telephone number of any brokers who may have a right to claim a commission, if known to the owner.

3. The amount of any and all commissions that may be claimed under any brokerage agreement disclosed in the owner’s affidavit, to the best of the owner’s knowledge and belief.

4. Whether the owner confirms or disputes the amount of any commission claimed from the disposition of the commercial real estate as disclosed in the owner’s affidavit.

(b) If the closing agent receives an affidavit from the owner under this subsection disclosing that any commission may be claimed from the disposition of the commercial real estate, regardless of whether the owner confirms or disputes the commission, the closing agent shall reserve from the owner’s net proceeds an amount equal to the total commission amount disclosed by the owner in the affidavit. Upon request by a broker who has a brokerage agreement with the owner covering the commercial real estate identified in the owner’s affidavit, the closing agent shall deliver a copy of the affidavit to the broker. If the owner’s net proceeds are insufficient to pay the full amount of the commission so disclosed, the closing agent shall reserve the entire amount of the owner’s net proceeds. If the owner’s affidavit discloses a commission amount that is different from the commission amount required to be reserved under subsection (1), the closing agent shall reserve the greater of the two commission amounts. The closing agent shall release the reserved proceeds only in accordance with the provisions of this part.

(3) If the provisions of subsection (1) do not require the closing agent to reserve against the owner’s net proceeds on account of a commission notice pertaining to the commercial real estate, and if the closing agent receives an owner’s affidavit pursuant to subsection (2) stating that the owner is not a party to any brokerage agreement under which any commission may be claimed from the disposition of the commercial real estate, the closing agent has no duty under this part to reserve any money or property for a commission from the owner’s net proceeds from the disposition of the commercial real estate.

(4) If the closing agent determines that the owner’s net proceeds from a disposition of commercial real estate are insufficient to pay the full amount of the commission claimed in a commission notice or disclosed in an owner’s affidavit, the closing agent shall, within 3 days after making that determination but no later than the closing of the disposition, notify the owner and the broker of the determination. The closing agent’s determination that the owner’s net proceeds are insufficient under this part, however, does not relieve the owner from the owner’s contractual obligations under the brokerage agreement to pay the full commission owing to the broker.

(5) If the owner confirms that a commission is payable to the broker, at the closing of the disposition of the commercial real estate the closing agent shall release to the broker the confirmed amount of the commission from the reserved proceeds. A settlement statement executed by the owner and showing the payment of a commission to the broker is confirmation by the owner of the commission amount shown on the settlement statement. If the owner disputes the broker’s right to receive all or any portion of the claimed commission, the closing agent shall release to the broker from the reserved proceeds only the undisputed portion of the commission, if any. Until the rights of the owner and the broker with respect to the disputed reserved proceeds are determined pursuant to s. 475.711 or s. 475.713 or the owner and the broker otherwise agree in writing, the closing agent shall not release the disputed reserved proceeds to any person other than to deposit the same in the registry of the court having jurisdiction of the dispute.

(6) The commission claimed in the commission notice shall be deemed confirmed by the owner, and the closing agent shall release the reserved proceeds to the broker, if the closing agent is required pursuant to subsection (1) to reserve any or all of the owner’s net proceeds and if all of the following conditions have been met:

(a) Five days have passed after the closing.

(b) The owner has neither confirmed nor disputed the claimed commission to the closing agent.

(c) The closing agent receives reasonably satisfactory evidence that the broker delivered a copy of the commission notice to the owner in accordance with s. 475.705.

(7) If the owner’s net proceeds consist in whole or in part of a purchase-money note, and if the money portion of the owner’s net proceeds is insufficient to pay the full amount of the commission claimed, the broker’s lien under this part for the portion of the commission not paid from the money proceeds shall attach to the purchase-money note and any security therefor, and the closing agent shall reserve and release the purchase-money note in accordance with this part in the same manner as the money portion of the reserved proceeds. If the owner and the broker are unable to agree within 5 days after the closing regarding the closing agent’s release of the purchase-money note, the closing agent shall interplead the purchase-money note along with any money reserved proceeds in accordance with s. 475.711.

(8) If the disposition of the commercial real estate is part of a like-kind exchange by the owner which is deferred from federal income tax under s. 1031 of the Internal Revenue Code of 1986, as amended, and if all of the owner’s net proceeds in excess of undisputed commissions shall be delivered to a third party in order to qualify the disposition for such tax deferral treatment, the owner may substitute other cash, a surety bond, an unconditional letter of credit, or other liquid security acceptable to the broker in lieu of any disputed reserved proceeds held by the closing agent under this section or deposited in the court registry in accordance with s. 475.711.

(9) Upon request of the closing agent or the owner, any broker who has recorded a commission notice under s. 475.707 shall submit a satisfaction or release of the commission notice in recordable form to the closing agent to be held in escrow pending the closing and the closing agent’s release to the broker of the portion of the owner’s net proceeds reserved by the closing agent under this section. The closing agent is authorized to deduct from the reserved proceeds payable to the broker the cost of recording the satisfaction or release of the commission notice.

(10) Neither the closing agent’s requirement for an owner’s affidavit pursuant to subsection (2), nor the closing agent’s reservation of any portion of an owner’s net proceeds pursuant to subsection (1) or subsection (2), shall relieve the owner of the owner’s obligation to close the transaction for the disposition of the commercial real estate, including, without limitation, any obligation of the owner to the buyer under the purchase and sale contract to discharge mortgages, liens, or encumbrances against the commercial real estate that were recorded after the commission notice and, therefore, are not subtracted from gross sales proceeds when computing the owner’s net proceeds under s. 475.719.

(11) A closing agent is not liable to the owner, the broker, or any other person in any civil action for any action taken by the closing agent to comply with the provisions of this part.

(12) No provision of this part shall require a closing agent to serve involuntarily more than 5 days after a closing as an escrow agent or stakeholder for any moneys or other property that are disputed by the owner and the broker under the provisions of this part.

## 475.711 Interpleader or other proceedings; deposit of reserved proceeds in court registry; discharge of closing agent from further liability.—

(1) The closing agent shall, by interpleader action or other legal proceeding, seek adjudication of the rights of the parties with respect to disputed reserved proceeds by the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the disputed reserved proceeds, in a county where all or a portion of the commercial real estate is located if, after the closing of a transaction for the disposition of the commercial real estate, all of the following conditions are met:

(a) The closing agent has reserved all or a portion of the owner’s net proceeds pursuant to s. 475.709 and the owner disputes the release to the broker of all or any portion of the reserved proceeds.

(b) The owner and the broker have not agreed in writing, within 5 days after the closing, regarding the closing agent’s release of the disputed reserved proceeds.

(c) Neither the owner nor the broker have commenced a civil action to determine the rights of the parties with respect to the disputed reserved proceeds.

(2) Unless otherwise agreed to by the owner and the broker in writing, the closing agent shall deposit the net amount of disputed reserved proceeds in the registry of the court having jurisdiction of any legal action or proceeding to determine the rights of the parties in the disputed reserved proceeds, whether commenced by the closing agent under subsection (1) or commenced by the owner or the broker under s. 475.713 or otherwise. The closing agent shall determine the net amount of disputed reserved proceeds deposited in the court registry by deducting from the disputed reserved proceeds:

(a) Any costs incurred by the closing agent to commence such action or proceeding, or to appear in any such action or proceeding commenced by the owner or the broker, including reasonable attorney fees.

(b) The costs of recording the affidavit described in subsection (3) if any commission notice has been recorded.

(c) The service charges of the clerk of court under s. 28.24 for receiving the net amount of such disputed reserved proceeds into the registry of the court.

(3) If a commission notice has been recorded in the public records of the county or counties where the commercial real estate is located, upon depositing the net disputed reserved proceeds with the clerk of court pursuant to subsection (2), the closing agent shall execute and record an affidavit referring to the recorded commission notice and stating that the net disputed reserved proceeds have been so deposited in accordance with this part. The recording of the affidavit shall operate to release the recorded commission notice.

(4) If a closing agent deposits the net disputed reserved proceeds with the clerk of court pursuant to subsection (2), the closing agent is discharged from any further liability or responsibility concerning the disputed reserved proceeds.

## 475.713 Civil action concerning commission; order to show cause; hearing; release of proceeds; award of costs and attorney fees.—

(1) If a commission notice claiming a commission is delivered to an owner pursuant to s. 475.705 and the owner disputes the claimed commission, the owner or the broker may file a civil action concerning the commission claim in the county court or circuit court, whichever has jurisdiction of controversies in the amount of the claimed commission, of the county where the commercial real estate or a portion of the commercial real estate is located.

(2) In a civil action by the owner, at the time the summons is issued or at any time before the complaint is answered by the broker, the owner may apply to the court for an order directing the broker to appear before the court at a time not earlier than 7 days or later than 15 days after the date of service of the motion and order on the broker to show cause why the commission claim should not be dismissed. The motion must state the grounds upon which relief is sought and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based. The order to show cause shall clearly state that if the broker fails to appear at the time and place specified in the order, the broker’s claim of lien against the owner’s net proceeds under this part shall be released, with prejudice, and the broker shall be ordered to pay the costs incurred by the owner and the closing agent, including reasonable attorney fees.

(3) The court shall issue an order releasing the broker’s claim of lien against the owner’s net proceeds from such disposition, discharging any commission notice that may have been recorded, ordering the release to the owner of the disputed reserved proceeds, and awarding costs and reasonable attorney fees to the owner to be paid by the broker if, following a hearing, the court determines that the owner is not a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice. If the court determines that the owner is a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice, the court shall issue an order so stating, ordering the release to the broker of the disputed reserved proceeds or such portion thereof to which the court determines that the broker is entitled, and awarding costs and reasonable attorney fees to the broker to be paid by the owner. Such orders are final judgments.

(4) A certified copy of any order issued by the court pursuant to subsection (3) discharging a recorded commission notice shall be recorded at the expense of the broker in the public records where the commission notice was recorded, and such order shall operate as a cancellation of the recorded commission notice.

(5) (a) In a civil action commenced by the owner or the broker under this section or in an interpleader action or other proceeding commenced by the closing agent under s. 475.711, the owner or the broker that is not the prevailing party shall be required to pay:

1. The costs and reasonable attorney fees incurred in the action by the prevailing party.

2. The costs and reasonable attorney fees incurred in the action by the closing agent.

3. The amount of any costs, recording charges, and service charges of the clerk of court that were deducted from the disputed reserved proceeds under s. 475.711(2) in determining the net amount thereof deposited into the registry of the court.

(b) If the court determines that neither the owner nor the broker is the prevailing party, the amounts set forth in subparagraphs (a)2. and 3. shall be divided equally between and paid by the owner and the broker.

(6) Proceedings conducted pursuant to this section shall not affect rights and remedies otherwise available to the owner or the broker under other applicable law.

## 475.715 Priority of recorded commission notice.—

All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a commission notice pursuant to the provisions of s. 475.707, have priority over the commission notice. The closing agent shall compute the owner’s net proceeds by subtracting from the gross sales proceeds the amount required to discharge any such prior recorded lien and the amount of money secured by any such prior recorded lien that the buyer permits to remain a lien against the title to the commercial real estate. A prior recorded lien includes, without limitation, a valid construction lien claim that is recorded after the recording of the broker’s commission notice but which relates back to a notice of commencement recorded under s. 713.13 prior to the recording date of the broker’s commission notice.

## 475.717 Service of notice.—

Notices to be delivered to a party pursuant to this part other than service of process as required in civil actions shall be by service of process, by registered or certified mail with return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered. Delivery is effective at the time of personal service, personal or electronic delivery, or 3 days following deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the brokerage agreement or such other address as is contained in a written notice from the broker or owner to the party giving the notice. If no address is provided in the brokerage agreement, the notice to the broker may be given to the broker’s address contained in the commission notice. Notice to a closing agent shall be addressed to the individual responsible for the closing if the person sending the notice knows that individual’s name.

## 475.719 Buyer’s broker.—

As used in this section, the term “buyer’s broker” means a broker that is entitled to receive payment from the buyer of commercial real estate of any fee or other compensation for licensed services, as specified in a written contract made between the buyer and the broker on or after the effective date of this act relating to the buyer’s purchase of the commercial real estate.

(1) A written contract between a buyer and a buyer’s broker for the payment by the buyer of any fee or other compensation to the buyer’s broker for licensed services relating to the sale or disposition of commercial real estate to the buyer is not a brokerage agreement with the owner under this part, and the buyer’s broker is not entitled under this part to record any commission notice, to claim any lien against commercial real estate, or to claim any lien against the owner’s net proceeds from the sale or disposition of commercial real estate.

(2) If an owner enters into a written contract with a buyer for the sale or disposition of any commercial real estate that will entitle the buyer’s broker to receive a fee or other compensation from the buyer under the terms of the buyer’s broker’s written contract with the buyer, the buyer’s broker may give notice of the buyer’s broker’s right to receive such payment to the closing agent, the owner, the buyer, or any other party to the sale or disposition or the financing thereof, provided that such notice may be given without violating any confidentiality provisions contained in either such written contract.

(3) No such notice given by the buyer’s broker pursuant to subsection (2) shall constitute a tortious interference with the sale or disposition or financing of the commercial real estate.

# PART IV COMMERCIAL REAL ESTATE LEASING COMMISSION LIEN ACT

[**475.800 Short title.**](#_475.800__)

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[**475.813 Subordination of lien.**](#_475.813___1)

## 475.800 Short title.—

Sections 475.800-475.813 may be cited as the “Commercial Real Estate Leasing Commission Lien Act.”

## 475.801 Definitions.—

As used in this part:

(1) “Automatic renewal commission” means a renewal commission for which the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission.

(2) “Broker” has the same meaning as in s. 475.01.

(3) “Brokerage agreement” means a written contract, entered into on or after the effective date of this act, between an owner of commercial real estate and a broker that obligates the owner to pay a commission to the broker for licensed services provided by the broker relating to the leasing of the commercial real estate as specified in the contract.

(4) “Commercial real estate” means a fee simple interest or other possessory estate in real property, except an interest in real property that is:

(a) Improved with one single-family residential unit or one multifamily structure containing one to four residential units;

(b) Unimproved and the maximum permitted development is one to four residential units under any restrictive covenants, zoning regulations, or comprehensive plan applicable to that real property; or

(c) Improved with single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether these units may be a part of a larger building or parcel containing more than four residential units.

(5) “Commission” means any fee or other compensation that an owner agrees to pay a broker for licensed services as specified in a brokerage agreement.

(6) “Days” means calendar days, but if a period would end on a day other than a business day, the last day of that period shall instead be the next business day.

(7) “Lease” means a written agreement creating a relationship of landlord and tenant with respect to commercial real estate, such that the tenant acquires from the landlord the right to possess the commercial real estate for a specified period of time.

(8) “Lien notice” means the written notice of lien made by a broker claiming a commission under s. 475.805.

(9) “Owner” means a person that is vested with fee simple title or a possessory estate, including a leasehold, in commercial real estate that is the subject of a lease. For purposes of this part, the owner obligated to pay a commission under a brokerage agreement may be a landlord or a tenant.

(10) “Real property” means one or more parcels or tracts of land located in this state, including any appurtenances and improvements.

(11) “Renewal commission” means an additional commission that may become payable to a broker under a brokerage agreement if a lease subject to that brokerage agreement is later renewed or is later modified to expand the leased premises or extend the lease term.

## 475.803 Broker’s lien for leasing commission.—

(1) A broker has a lien upon the owner’s interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease of the commercial real estate. If the owner obligated to pay the commission is the landlord, the broker’s lien attaches to the landlord’s interest in the commercial real estate identified in the brokerage agreement but not to the tenant’s leasehold estate. If the owner obligated to pay the commission is the tenant, the broker’s lien attaches to the tenant’s leasehold estate but not to the landlord’s interest in the commercial real estate.

(2) For purposes of this part, a commission other than a renewal commission is earned on the earlier of the date that:

(a) An event occurs that, under the brokerage agreement, defines when the commission is earned; or

(b) The owner enters into a lease of all or part of the commercial real estate specified in the brokerage agreement, provided that a commission would be payable to the broker pursuant to the brokerage agreement for that lease.

(3) For the purposes of this part, a renewal commission with respect to a lease renewal or lease modification is deemed earned when the broker performs all additional services relating to the lease renewal or lease modification that are expressly required by the brokerage agreement. If the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission, the renewal commission is an automatic renewal commission and is deemed earned when the broker first earned a commission for that lease.

(4) For purposes of this part, a commission is payable at the time provided in the brokerage agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, a broker may not enforce a lien for that commission under this part.

(5) A broker’s lien for commission arising under this part:

(a) Belongs to the broker named in the brokerage agreement and not to an employee or independent contractor of the broker.

(b) Cannot be assigned voluntarily or by operation of law and may not be enforced by a person other than the broker.

(c) Cannot be waived before the commission is earned.

(d) Cannot be waived by any person other than the broker, regardless of whether that person may execute and bind the broker to a brokerage agreement.

(6) A broker shall disclose to the owner at or before the time the owner executes the brokerage agreement that this part creates lien rights for a commission earned by the broker that are not waivable before the commission is earned by the broker. A broker may not enforce a lien under this part for a commission earned under a brokerage agreement for which the disclosure required by this subsection was not made. A disclosure in substantially the following form shall be sufficient: “The Florida Commercial Real Estate Leasing Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your interest in the property for the broker’s commission. The broker’s lien rights under the act cannot be waived before the commission is earned.”

## 475.805 Contents of lien notice.—

(1) A lien notice made by a broker with respect to a commission claimed under this part shall be in writing, shall be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public, and shall include the following:

(a) The name of the owner of the commercial real estate who is obligated to pay the claimed commission.

(b) A statement whether the owner obligated to pay the commission is the landlord or the tenant under the lease for which the commission is claimed.

(c) The name of the person owning the fee simple interest in the commercial real estate, if other than the owner obligated to pay the commission.

(d) The legal description of the commercial real estate.

(e) The name, mailing address, telephone number, and license number of the broker.

(f) The effective date of the brokerage agreement.

(g) The amount of the commission claimed by the broker, which may be stated in a dollar amount or may be stated in the form of a formula determining the amount, such as a percentage of the rents payable under the lease.

(h) A description of the lease sufficient to identify the lease for which the commission is claimed, including, if then known to the broker, the names of the landlord and tenant under the lease, the date of the lease, and the identification of the leased premises.

(i) A statement of whether the broker is claiming an automatic renewal commission and the amount of such automatic renewal commission or the formula for computing the same.

(j) A statement under penalty of perjury that the broker has read the lien notice, knows its contents, believes the same to be true and correct, and makes the commission claim pursuant to the brokerage agreement described in the lien notice.

(2) A lien notice in substantially the following form shall be sufficient for purposes of subsection (1):

BROKER’S COMMISSION LIEN NOTICE  
UNDER FLORIDA COMMERCIAL REAL ESTATE  
LEASING COMMISSION LIEN ACT

Notice is hereby given, pursuant to the Florida Commercial Real Estate Leasing Commission Lien Act, part IV of chapter 475, Florida Statutes (the “act”), that the undersigned real estate broker is entitled to receive a leasing commission from the owner named below pursuant to the terms of a written brokerage commission agreement regarding a lease of the commercial real estate described below, and the undersigned broker claims a lien under the act against the owner’s interest in the commercial real estate in the amount set forth below.

1. Name of the owner who is obligated to pay the commission:

2. (Check one:) The owner obligated to pay the commission is:

[ ] the landlord under the lease.

[ ] the tenant under the lease.

3. Name of the person owning the fee simple interest in the commercial real estate, if other than the owner who is obligated to pay the commission:

4. Legal description of the commercial real estate:

5. Name, mailing address, telephone number, and Florida broker license number of the undersigned broker:

6. Effective date of the written brokerage commission agreement between the owner and the broker under which the commission is or will be payable:     ,     .

7. Amount of commission claimed by the undersigned broker:

$     , or       percent of rents payable under lease, or

[specify other formula for determination of commission amount]:  
 8. The lease for which the commission is claimed is described as follows [provide all information known to the broker]:

Name of landlord:

Name of tenant:

Date of lease:      ,

Leased premises:

9. Automatic renewal commissions (check yes or no): Is the undersigned broker claiming a commission that may become payable if the lease is later renewed or modified to expand the leased premises or to extend the lease term, but the written brokerage commission agreement does not expressly require the broker to perform any additional services in order to receive this later commission?

[ ] Yes [ ] No

If yes, specify the amount of such later commission or the formula for computing the later commission:

10. The expiration date of this lien notice is 2 years after the date of recording, unless the answer to paragraph 9 is yes, in which case the expiration date of this lien notice for the commission described in paragraph 9 is 10 years after the date of recording.

11. The undersigned broker, under penalty of perjury, hereby swears or affirms that the undersigned broker has read this lien notice, knows its contents and believes the same to be true and correct, and that the undersigned broker is making this commission claim pursuant to the written brokerage commission agreement described in this lien notice.

Signed:   (broker)

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this    day of  ,   ,  
by     .

Signed:   (notary public)

## 475.807 Recording lien notice; effectiveness.—

(1) (a) After a commission is earned under this part, the broker may record a lien notice in the public records maintained by the clerk of court in the county or counties in which the commercial real estate is located. The lien notice shall be recorded no later than the earlier of:

1. Ninety days after the tenant takes possession of the leased premises or, in the case of a renewal commission that requires the broker to perform additional services as provided in s. 475.803(3), 90 days after the broker performs the additional services required for the renewal commission; or

2. The date on which the owner who is obligated to pay the commission records in the public records a deed or assignment transferring the owner’s interest in the commercial real estate to a bona fide purchaser for value.

(b) A broker who fails to record a lien notice within the time period prescribed by this section may not enforce a lien for the claimed commission under this part, and a lien notice that is recorded outside of the time period prescribed by this section is void.

(2) Within 7 days after recording the lien notice, the broker shall deliver a copy of the lien notice to the owner obligated to pay the claimed commission.

(3) The broker’s lien created by this part against the commercial real estate is perfected by such recording of the lien notice and takes priority under this part as of the date of the recording of the lien notice. The priority of the lien notice does not relate back to the date of the brokerage agreement.

(4) If the commission is to be paid in installments and any of those installments are due after the lease is executed, the lien notice is valid only to the extent that moneys remain unpaid by the owner to the broker.

(5) A recorded lien notice is effective under this part only with respect to leases made by the owner named in the lien notice, and the lien notice is ineffective with respect to any leases that are made by:

(a) A bona fide purchaser for value of the commercial real estate;

(b) A purchaser at any mortgage foreclosure sale of the commercial real estate; or

(c) Any successor owner acquiring the commercial real estate from a purchaser described in paragraph (a) or paragraph (b).

(6) Whenever a lien notice is recorded and a condition or event occurs or fails to occur that would preclude the broker from receiving the claimed commission under the terms of the brokerage agreement, including the filing of a lien notice in a manner that does not comply with this part, the broker shall, within 7 days following demand by the owner, record a written release of the lien notice in the public records of the county where the lien notice was recorded.

(7) If a broker records a lien notice pursuant to this section and the claimed commission is paid or the lien notice is otherwise discharged or satisfied pursuant to this part, the broker shall, within 7 days after the commission is paid or the lien notice is otherwise discharged or satisfied, record a written release of the lien notice in the public records of the county where the lien notice was recorded.

(8) (a) Except as provided in paragraph (b), a lien notice recorded by a broker under this part for a claimed commission expires 2 years after the date of recording, unless within that time the broker commences an action to foreclose the lien under s. 475.809 and records a notice of lis pendens in the public records of the county where the lien notice was recorded.

(b) To the extent that a lien notice recorded by a broker under this part claims an automatic renewal commission that is earned but not then payable, the lien notice expires 10 years after the date of recording, unless within that time the broker commences an action to foreclose the lien under s. 475.809 and records a notice of lis pendens in the public records of the county where the lien notice was recorded. If the owner remains obligated to pay a commission to the broker, the broker may extend the expiration date of a lien notice for an automatic renewal commission by recording an extension notice in the same public records within the last 6 months before such expiration date. An extension notice shall refer to the recording information of the original lien notice, shall state that the owner remains obligated to pay a commission to the broker, and shall include the same information and be executed in the same manner as required by s. 475.805(1) for the original lien notice. A timely recorded extension notice shall extend the expiration date of the original recorded lien notice by 10 additional years. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(c) The owner or the owner’s agent or attorney may elect to shorten the time within which the broker shall commence an action to foreclose a lien under s. 475.809, or to enforce a claim against a transfer bond or other security under s. 475.811, by recording in the clerk’s office a notice of contest in substantially the following form:

NOTICE OF CONTEST OF BROKER’S LIEN

To:   (Name and address of broker)

You are notified that the undersigned contests the lien notice filed by you on     ,   (year)  , and recorded in Official Records Book     , Page  , of the public records of      County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This     day of     ,   (year)  .

Signed:   (Owner or Attorney)

The lien of any broker upon whom such a notice of contest is served and who fails to institute a suit to enforce the lien within 60 days after service of such notice of contest shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the broker at the address shown in the lien notice or most recent amendment thereto and shall certify to such service on the face of the notice of contest and record the notice of contest. Service of the notice of contest by the clerk shall be deemed complete upon mailing.

(9) Neither the recording of a broker’s lien notice or any extension thereof nor the recording of any lis pendens to foreclose a broker’s lien thereunder shall constitute notice to any creditor or subsequent purchaser pursuant to s. 695.01 or chapter 712 of the existence of any lease described in the lien notice, extension notice, or lis pendens.

## 475.809 Foreclosure of lien; civil action by owner; award of costs and attorney fees.—

(1) A broker may enforce a lien for a commission that is earned and payable under this part by a foreclosure suit in the same manner as if the lien notice were a mortgage recorded against the commercial real estate of the owner obligated to pay the claimed commission. The foreclosure shall be commenced in the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the claimed commission, of the county where the lien notice was recorded. The foreclosure action shall be commenced before the lien notice expires or is extinguished under s. 475.807(8); otherwise, the lien notice shall become null and void and have no further force or effect.

(2) If a lien notice is recorded pursuant to s. 475.807 and the owner disputes the claimed commission, the owner may file a civil action seeking to discharge the lien in the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the claimed commission, of the county where the lien notice was recorded.

(3) In any action to foreclose a lien or to discharge a lien pursuant to this section, the prevailing party shall be awarded costs and reasonable attorney fees.

## 475.811 Transfer of lien to security.—

(1) (a) Any lien claimed by a broker by recording a lien notice under this part may be transferred by any person having an interest in the commercial real estate upon which the lien is imposed from such commercial real estate to other security by either:

1. Depositing in the clerk’s office a sum of money; or

2. Filing in the clerk’s office a bond executed as surety by a surety insurer licensed to do business in this state, either to be in an amount equal to the amount claimed in the lien notice, plus interest thereon at the legal rate for 3 years, plus $1,000 or 25 percent of the amount demanded in the lien notice, whichever is greater, to apply on any attorney fees and court costs that may be taxed in any proceeding to enforce said lien.

(b) Such deposit or bond shall be conditioned to pay any judgment or decree that may be rendered for the satisfaction of the lien for which such lien notice was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the commercial real estate to the security and shall mail a copy thereof by registered or certified mail to the broker named in the lien notice at the address stated therein. Upon filing the certificate of transfer, the commercial real estate shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. Subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner on account of the commission claimed in the lien notice. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to $15. If the transaction involves the transfer of multiple liens, an additional charge of up to $7.50 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the security or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) In any action pending under s. 475.809 to foreclose or discharge a lien, any party having an interest in such security or the commercial real estate from which the lien was transferred may at any time and any number of times file a motion for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the lien notice is insufficient to pay the fees of the broker’s attorney and court costs incurred in the action to enforce the lien, the court shall increase the amount of the cash deposit or lien transfer bond.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 475.809 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer.

## 475.813 Subordination of lien.—

(1) Nothing contained in this part precludes a broker from agreeing to subordinate a lien claimed by the broker under this part in favor of the holder of any mortgage or other lien against the owner’s interest in the commercial real estate that is subject to the broker’s lien.

(2) With or without the consent of the broker, the owner may subordinate a lien claimed by the broker for an automatic renewal commission in favor of the holder of a subsequent mortgage encumbering the owner’s interest in the commercial real estate. The subordination instrument described in this subsection shall be made in writing and shall be recorded by the owner in the public records of the same county where the broker’s lien notice was recorded.

(3) A broker’s lien notice recorded against commercial real estate under this part is subordinate to any mortgage that has at any time secured any purchase money indebtedness, provided that the mortgage is made by the owner of the commercial real estate in favor of a person unrelated to the owner. This subordination provision affects only the relative priority of the broker’s lien notice and the mortgage with respect to each other, and this provision does not affect their relative priority with respect to any other mortgage, lien, encumbrance, or other matter affecting the title to the commercial real estate.

# Pest Control

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## 1B482.011 Short title.

This chapter may be cited as the "Structural Pest Control Act."

## 2B482.021 Definitions.

For the purposes of this chapter, and unless otherwise required by the context, the term:

(1) "Agricultural area" means an area:

(a) Upon which a ground crop, trees, or plants are grown for commercial purposes;

(b) Where a golf course, park, nursery, or cemetery is located; or

(c) Where farming of any type is performed or livestock is raised.

(2) "Business location" means an advertised permanent location in or from which pest control business is solicited, accepted, or conducted.

(3) "Category" means a distinct branch or phase of pest control for which a pest control operator's certificate may be issued such as: fumigation, general household pest control, termites and other wood-destroying organisms pest control, lawn and ornamental pest control, and such a combination or division of such branches of pest control as the department may by rule establish.

(4) "Certified operator" means an individual holding a current pest control operator's certificate issued by the department.

(5) "Certified operator in charge" means a certified operator:

(a) Whose primary occupation is the pest control business;

(b) Who is employed full time by a licensee; and

(c) Whose principal duty is the personal supervision of the licensee's operation in a category or categories of pest control in which the operator is certified.

(6) “Commercial fertilizer application” means the application of fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

(7) "Department" means the Department of Agriculture and Consumer Services.

(8) "Employee" means a person who is employed by a licensee that provides that person with necessary training, supervision, pesticides, equipment, and insurance and who receives compensation from and is under the personal supervision and direct control of the licensee’s certified operator in charge and from whose compensation of the licensee regularly deducts and matches federal insurance contributions and federal income and Social Security taxes.

(9) "Fumigant" means a chemical which, at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism. This definition implies that a fumigant acts as a gas in the strictest sense of the word. This definition excludes aerosols that are particulate suspensions of liquids or solids dispersed in air.

(10) "Fumigation" means the use, within an enclosed space or in or under a structure or tarpaulins, of a fumigant in concentrations that may be hazardous to man.

(11) "General household pest control" means pest control with respect to any structure, not including fumigation or pest control with respect to termites and other wood-destroying organisms.

(12) "Identification cardholder" means an owner or employee to whom a current card has been issued by the department identifying the holder to the public or to any law enforcement officer or any agent of the department charged with, or entitled to exercise any function in connection with, the enforcement of this chapter and any rules made pursuant to this chapter.

(13) "Independent contractor" means an entity separate from the licensee that:

(a) Receives moneys from a customer which are deposited in a bank account other than that of the licensee;

(b) Owns or supplies its own service vehicle, equipment, and pesticides;

(c) Maintains a business operation, office, or support staff independent of the licensee’s direct control;

(d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials, or

(e) Pays its own worker's compensation as an independent contractor.

(14) "Infestation" means the presence of living pests in, on, or under a structure, lawn, or ornamental.

(15) "Integrated pest management" means the selection, integration, and implementation of multiple pest control techniques based on predictable economic, ecological, and sociological consequences, making maximum use of naturally occurring pest controls, such as weather, disease agents, and parasitoids, using various biological, physical, chemical, and habitat modification methods of control, and using artificial controls only as required to keep particular pests from surpassing intolerable population levels predetermined from an accurate assessment of the pest damage potential and the ecological, sociological, and economic cost of other control measures.

(16) "Lawn" means the turf formed from grass or other plants.

(17) "Lawn and ornamental pest control" means pest control with respect to pests of any lawn or ornamental.

(18) "Licensee" means a person, partnership, firm, corporation, or other business entity having a license issued by the department for engaging in the business of pest control at a particular business location.

(19) “New construction” means the erection of a new building or the construction of an addition to an existing building, which encloses a space and requires a building permit under applicable building codes.

(20)"Ornamental" means any shrub, bush, tree or other plant used or intended for use:

(a) In connection with the occupation or use of any structure; or

(b) By man for purposes other than in an agricultural area.

(21) "Pest" means an arthropod, wood-destroying organism, rodent, or other obnoxious or undesirable living plant or animal organism.

(22) "Pest control" includes:

(a) The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental;

(b) The identification of or inspection for infestations or infections in, on, or under a structure, lawn, or ornamental;

(c) The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental;

(d) All phases of fumigation, including:

1. The treatment of products by vault fumigation; and

2. The fumigation of boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers; and

(e) The advertisement of, the solicitation of, or the acceptance of remuneration for any work described in this subsection, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.

(23) "Pesticide or economic poison" means any substance or mixture of substances intended for:

(a) Preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi on or in living man or other animals; or

(b) Use as a plant regulator, defoliant, or desiccant.

(24) "Rodent" means a rat, mouse, squirrel, or flying squirrel or other animal of the order Rodentia, including a bat, which may become a pest in, on, or under a structure.

(25) "Rodent control" means application of remedial measures for the purpose of controlling rodents.

(26) "Special identification cardholder" means a person to whom an identification card has been issued by the department showing that the holder is authorized to perform fumigation.

(27) "Structure" means:

(a) Any type of edifice or building, together with the land thereunder, the contents thereof, and any patio or terrace thereof;

(b) That portion of land upon which work has commenced for the erection of an edifice or building; or

(c) A railway car, motor vehicle, trailer, barge, boat, ship, aircraft, wharf, dock, warehouse, or common carrier.

(28) "Termites and other wood-destroying organisms pest control" means pest control with respect to any termite or other wood-destroying organisms, including fungi, by the use of any chemical or mechanical methods, including moisture control for the prevention or control of fungus in existing structures, but not including fumigation or general household pest control.

(29) “Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section agriculture has the same meaning as in s. 570.02.

(30) "Wood-destroying organism" means arthropod or plant life which damages and can reinfest seasoned wood in a structure, namely termites, powder-post beetles, oldhouse borers, and wood-decaying fungi.

## 3B482.032 Enforcement.

(1) The department is empowered to enforce this chapter.

(2) It is the duty of every state attorney, sheriff, police officer, and other appropriate county or municipal officer to enforce, or to assist any duly authorized inspector or other agent of the department in the enforcement of, this chapter and the rules adopted by the department under the provisions of this chapter.

(3) The department may commence and maintain all proper and necessary actions and proceedings:

(a) To enforce its rules.

(b) To make application for injunction to the proper circuit court, and the judge of that court has jurisdiction, upon hearing and for cause shown, to grant a temporary injunction or a permanent injunction, or both, restraining a person from violating or continuing to violate any of the provisions of this chapter or of the rules adopted under this chapter or from failing or refusing to comply with the requirements of this chapter or of the rules adopted under this chapter.

(4) The department, or its agent, is authorized to enter upon any public or private premises or carrier during regular business hours in the performance of its duties relating to pesticides and records pertaining to same.

## 4B482.051 Rules.

The department may adopt rules to implement the provisions of this chapter. Before proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(1) That all pesticides or economic poisons be used only in accordance with the registered labels and labeling or as directed by the United States Environmental Protection Agency or the department.

(2) That vehicles and trailers used in pest control be permanently marked with the licensee's name that is registered with the department. However, vehicles that are used to perform only sales and solicitation may have temporary or removable markers.

(3) That written contracts be required for providing termites and other wood-destroying organisms pest control, that provisions necessary to assure consumer protection as specified by the department be included in such contracts, and that require licensees to comply with the contracts issued.

(4) That a licensee, before performing general fumigation, notify in writing the department of the location where the fumigation is to be performed, which notice must be received by the department at least 24 hours before the fumigation and must contain such information as the department requires. The department may specify circumstances under which notification of less than 24 hours is allowed and what notice is required in those circumstances.

(5) That any pesticide used as the primary preventive treatment for subterranean termites in new construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

(6) That the department may issue an immediate stop-use or stop-work order for fumigation performed in violation of fumigant label requirements or department rules, or in a manner that presents an immediate serious danger to the health, safety, or welfare of the public, including, but not limited to, failure to use required personal protective equipment, failure to use a required warning agent, failure to post required warning signs, failure to secure a structure’s usual entrances as required, or using a fumigant in a manner that will likely result in hazardous exposure to humans, animals, or the environment.

(7) That the department may require safety procedures for the clearance of residential structures before reoccupation after fumigation.

## 5B482.061 Inspectors.

The department shall appoint, as inspectors, a sufficient number of individuals whom the department has determined are qualified to perform the inspection or investigative work necessary. The inspectors shall make inspections of licensees, conduct investigations as appropriate, and report all violations to the department. The department shall waive the fees for examination for certification and for issuance or renewal of the certificates during the time that those individuals serve as inspectors for the department.

## 6B482.071 Licenses.

(1) The department may issue licenses to qualified businesses to engage in the business of pest control in this state. It is unlawful for any person to operate a pest control business that is not licensed by the department.

(2) (a) Before entering business or upon transfer of business ownership, and also annually thereafter, on or before an anniversary date set by the department for each licensed business location, each person, partnership, firm, corporation, or other business entity engaged in pest control must apply to the department for a license, or a renewal thereof, for each of its business locations. Applications must be made on forms prescribed and furnished by the department.

(b) The department shall establish a fee for the issuance of a license, which fee may not be more than $300 or less than $75, and a fee for the renewal of a license, which fee may not be more than $300 or less than $75; however, until rules setting these fees are adopted by the department, the issuance fee and renewal fee shall each be $75. After a grace period not exceeding 30 calendar days following the anniversary renewal date, the department shall assess a late renewal charge of $50, which must be paid in addition to the renewal fee. The aggregate of the fees assessed pursuant to this paragraph may not exceed 105 percent of the direct costs for administering this chapter.

(c) Unless timely renewed, a license automatically expires 60 calendar days after the anniversary renewal date. Subsequent to such expiration, a license may be reinstated only upon reapplication and payment of the issuance fee and the late renewal fee.

(d) A license automatically expires when a licensee changes its business location address or its business name as registered with the department. The department shall issue a new license for the remainder of the term upon payment of a fee of $25.

(e) The department may not issue or renew a license to engage in the pest control business unless the applicant's pest control activities are under a certified operator or operators in charge who are certified in the categories of the licensee.

(f) The department by rule may establish a procedure for expediting the processing of an application for license upon payment by the applicant of a special fee in an amount sufficient to cover the cost of such expedited process, but not exceeding $50.

(g) The department may deny the issuance of a pest control business license to any applicant, or refuse to renew the license of any licensee, if the department finds that the applicant or licensee or any of its directors, officers, owners, or general partners are or were directors, officers, owners, or general partners of a pest control business which has gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.

(3) A licensee shall display its current license at each of its business locations. Each business location of a licensee must be licensed.

(4) A licensee may not operate a pest control business without carrying the required insurance coverage. Each person making application for a pest control business license or renewal thereof must furnish to the department a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury and property damage consisting of:

(a) Bodily injury: $250,000 per person and $500,000 per occurrence; and property damage: $250,000 occurrence and $500,000 in the aggregate; or

(b) Combined single-limit coverage: $500,000 in the aggregate.

(5) A license under this section is a prerequisite for the issuance of a local occupational license to engage in pest control, as provided in s. 205.1967.

## 482.072 Pest control customer contact centers.

(1) The department may issue a license to a qualified business to operate a customer contact center, to solicit pest control business, or to provide services to customers for one or more business locations licensed under s. 482.071. A person may not operate a customer contact center for a pest control business that is not licensed by the department.

(2) (a) Before operating a customer contact center, and biennially thereafter, on or before an anniversary date set by the department for a licensed customer contact center location, the pest control business must apply to the department for a license under this chapter, or a renewal thereof, for each customer contact center location. An application must be submitted in the format prescribed by the department.

(b) The department shall establish a fee of at least $600, but not more than $1,000, for the issuance of a customer contact center license and a fee of at least $600, but not more than $1,000, for renewal of a customer contact center license. However, until rules for renewal fees are adopted, the initial licensing fee and renewal fee are each $600. The department shall establish a grace period, not to exceed 30 calendar days after the license’s anniversary renewal date, and shall assess a late fee of $150, in addition to the renewal fee, for a license that is renewed after the grace period.

(c) A license automatically expires 60 calendar days after the anniversary renewal date unless the license is renewed before that date. When a license expires, it may be renewal fee and a late renewal fee.

(d) A license automatically expires if a licensee changes the business address of its customer contact center location. The department shall issue a new license upon payment of a $250 fee. The new license automatically expires 60 calendar days after the anniversary renewal date of the former license unless the license is renewed before that date.

(e) The department may not issue or renew a license to operate a customer contact center unless the pest control business licensees for which the customer contact center solicits business are owned in common by a person or business entity recognized by this state.

(f) The department may deny a license or refuse to renew a license if the applicant of licensee, or one or more of the applicant’s of licensee’s directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that meets the conditions in s. 482.071(2)(g).

(g) Sections 482.091 and 482.152 do not apply to a person who solicits pest control services or provides customer service in a licensed customer contact center unless the person performs pest control as defined in s. 482.021(22)(a)-(d)-, executes a pest control contract, or accepts remuneration for such work.

(h) Section 482.071(2)(e) does not apply to a license issued under this section.

(3) (a) The department shall adopt rules establishing requirements and procedures for customer contact center recordkeeping and monitoring to ensure compliance with this section and rules adopted in accordance with this section.

(b) Notwithstanding any other provision of this section:

1. A customer contact center licensee is subject to disciplinary action under s. 482.161 for a violation of this section or a rule adopted under this section committed by a person who solicits pest control services or provides customer service in a customer contact center operated by a licensee if the licensee participates in the violation.

## 7B482.0815 Permit to perform preventive termite treatment services for new construction only.

(1) A licensee must have a permit to perform preventive termite treatments for new construction, except for preventive termite treatments on additions to existing structures for which the licensee has a current termite treatment contract.

(2) A permit shall be automatically renewed upon renewal of the license held by the licensee, unless the permit has been suspended, revoked, or otherwise denied.

(3) A permit shall be probationary for 120 days after a licensee is found to be in violation of s. 482.051(5) or a rule relating to the application of specific amounts, concentrations, and treatment areas, except for provisions governing recordkeeping. A licensee whose permit is on probationary status must provide advance notice to the department of any preventive treatment planned for new construction.

(4) A licensee’s permit shall be suspended for a 30-day to 90-day period if:

(a) The licensee whose permit is on probationary status violates s. 482.051(5) or a rule relating to the application of specific amounts, concentrations, or treatment areas, except for provisions governing recordkeeping, at three or more sites on three or more separate dates;

(b) The licensee violates s. 482.051(3) or a rule with respect to three contracts within 2 years and the violation is failure to comply with contractual obligations to re-treat a wood-destroying-organism infestation or to repair damage caused by wood-destroying organisms when required by the contract. If a licensee makes a good-faith offer to repair damage covered by a valid contract, the licensee must be considered to be in compliance with the contractual obligation;

(c) The licensee violates subsection (9); or

(d) The licensee violates the recordkeeping requirements of s. 482.051(5) three or more times within 2 years.

(5) A suspended permit may be reinstated after the period of the suspension if the licensee’s license is in good standing.

(6) The permit of a licensee whose permit has been suspended within the previous 3 years shall be revoked if the licensee subsequently meets any of the conditions of subsection (4).

(7) The department may not issue a permit or renew the permit to perform preventive termite treatments if the applicant or licensee or any of its directors, officers, owners, or general partners are or were directors, officers, owners, or general partners of a pest control business that went out of business or sold the business within 5 years immediately preceding the date of application or renewal and failed to reimburse the prorated renewal fee of any customer’s remaining wood-destroying organism contract periods or failed to provide for another licensed pest control operator to assume its existing wood-destroying-organism contract responsibility.

(8) A licensee must conspicuously display its current permit at all business locations, each of which must have a separate permit.

(9) A licensee holding a permit must maintain accurate records of all pesticides purchased, obtained, or available for its use; the total amount of the area treated using soil applied termiticides; and the total number of sites treated using this and any other method of treatment. These records must be made available to the department upon request. The amount of pesticides purchased, obtained, or otherwise available must at least equal the amount required by the pesticide label to treat the area or number of sites treated.

(10) The department shall suspend the license of any licensee who performs preventive termite treatments for new construction while its permit is suspended or revoked.

(11) The department shall adopt rules necessary to administer this section.

## 8B193482.091 Employee identification cards.

(1) (a) Each employee who performs pest control for a licensee must have an identification card.

(b) Either the licensee or the licensee's certified operator in charge must apply to the department for an identification card for each employee who will perform pest control therefor within 30 days after employment of that employee, on a form prescribed by the department. The licensee and the licensee's certified operator in charge are jointly responsible for obtaining such identification cards.

(2) (a) An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and shall not be an independent contractor. An identification cardholder shall operate only out of, and for customers assigned from, the licensee's licensed business location. An identification cardholder shall not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and shall perform pest control only for the licensee's customers.

(b) The identification card shall be carried on the employee's person while performing or soliciting pest control and shall be presented on demand to the person for whom pest control is being performed or solicited, to any inspector of the department, or to any of such other persons as are designated by the rules of the department.

(c) An employee may not perform pest control without carrying on his person a current identification card affixed with the employee's signature and current photograph.

(d) An identification cardholder may use only the licensee's pesticides, equipment, and other materials when performing pest control.

(e) An identification cardholder shall consult regularly with the licensee's certified operator in charge concerning:

1. The selection of proper and correct chemicals for the particular pest control work to be performed;

2. The safe and proper use of the particular pesticides applied; and

3. The correct concentrations and formulations of pesticides used for the various types of pest control work performed.

(3) A licensee or certified operator may not assign or use an employee to perform any category of pest control without providing trained supervision unless the employee is trained and qualified in that category of pest control. An employee may not perform, solicit, inspect, or apply pest control without first having been provided at least 5 days of field training in the appropriate category of pest control under the direct supervision, direction, and control of a certified operator.

(4) An identification card automatically expires when the holder thereof ceases to be an employee of the licensee for which the card was secured. In such case, either the licensee or certified operator in charge shall obtain and destroy the expired card. An identification card expires on the licensee's next anniversary date after issuance or upon transfer of business ownership, change of business name registered with the department, or change of licensee's business location address. Each identification card must be renewed annually thereafter on or before the licensee's anniversary date as set by the department for each licensed business location.

(5) The fee for each identification card is $10.

(6) An employee whose duties are confined to office secretarial, bookkeeping, office clerical, office filing, trenching, digging, raking, putting up or taking down tents, clamping, or carrying away debris or such other activities as specified by the department shall be exempted by the department from being required to hold an identification card.

(7) A person may not be issued, or may not hold, an identification card for more than one licensee at any one time, except a certified operator for the express and sole purpose of, and period for, obtaining experience to qualify for examination in a category for which such person is not certified and seeks certification. The period of time for which a second card may be issued may not exceed 1 year from the date of issuance, except in the category of fumigation for which a card may be issued for 2 years.

(8) A licensee having more than one licensed business location may temporarily assign an identification cardholder, other than a certified operator in charge, to any of its licensed business locations without obtaining another identification card for such holder.

(9) For every employee who performs inspections for wood-destroying organisms pursuant to s. 482.226, the licensee or certified operator in charge must apply for an identification card that identifies that employee as having received the special training specified in this subsection in order to perform inspections pursuant to s. 482.226. The application for such identification card must be accompanied by an affidavit, signed by the prospective identification cardholder and by the licensee or certified operator in charge, which states that the prospective identification cardholder has received training in the detection and control of wood-destroying organisms, including but not limited to training in:

(a) The biology, behavior, and identification of wood-destroying organisms with particular emphasis on ones common in this state and the damage caused by such organisms;

(b) The inspection forms to be used to report the finding; and

(c) Applicable federal, state, and local laws or ordinances.

Such identification cards must be applied for, and shall be issued and used, in accordance with this section. This subsection does not apply to a certified operator who is certified in the category of pest control with respect to termites and other wood-destroying organisms. A person may not perform such inspections except under the supervision of a certified operator in charge who is certified in the category of termites and other wood-destroying organisms pest control.

(10) In addition to the training required by s. 482.091(3), each identification cardholder must receive 4 hours of classroom training in pesticide safety, integrated pest management, and applicable federal and state laws and rules within 6 months after issuance of the card or must have received such training within 2 years before issuance of the card. Each cardholder must receive at least 2 hours of continuing training in pesticide safety, integrated pest management, and applicable federal and state laws and rules by the renewal date of the card. Certified operators and special identification cardholders for fumigation who maintain their certificates in good standing are exempt from this subsection. The department shall adopt rules regarding verification of such training.

## 9B482.111 Pest control operator's certificate.

(1) The department shall issue a pest control operator’s certificate to each individual who qualifies under this chapter. Before issuance of an original certificate, an individual must complete an application for examination, pay the examination fee required under s. 482.141, and pass the examination. Before engaging in pest control work, each certified operator must be certified as provided in this section.

(2) (a) The department shall issue pest control operator's certificates in several categories, including fumigation, general household pest control, lawn and ornamental pest control, and termites and other wood-destroying organisms pest control.

(b) The specific scope of work (or job scope) for individuals in each category established under paragraph (a) must be pursuant to the definitions set forth in this chapter. Individuals certified in a particular category, or individuals operating pursuant to the authority of a certified individual, may not perform operations outside that category's job scope if such operations are within the job scope of another category, unless the individual is certified in that category or unless otherwise provided in this chapter.

(3) Annually, on or before an anniversary date set by the department, an individual so issued a pest control operator's certificate must apply to the department on a form prescribed by the department for renewal of such certificate. After a grace period not exceeding 30 calendar days following such renewal date, a late renewal charge of $50 shall be assessed and must be paid in addition to the renewal fee.

(4) Unless timely renewed, a certificate automatically expires 180 calendar days after the anniversary renewal date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination and issuance fees due.

(5) Each certified operator in charge at a licensed business location shall display his certificate and current renewal receipt at the business location in his charge.

(6) (a) Each location of each licensed pest control business must have a certified operator in charge who is certified for the particular category of pest control engaged in at that location. A certified operator in charge must be registered with the department pursuant to rules adopted pursuant to this section. A certified operator in charge may be in charge of one or more of all categories if he is certified for those categories.

(b) A person may not be in charge of the performance of pest control activities of any category of a licensee unless he is certified for that category.

(c) A certified operator may not be in charge of the performance of pest control activities at more than one business location for a licensee; however, the department shall prescribe by rule that, during the temporary absence of the certified operator currently registered in charge of a licensed business location, the licensee may, for a period not exceeding 30 days, designate another certified operator, certified in the same categories as the certified operator in charge, to be in charge of and responsible for performing those duties requiring the physical presence of a certified operator in charge. In any such case, the certified operator designated temporarily in charge and the licensee are jointly responsible for the pest control work performed and for compliance with other provisions of this chapter and of the rules adopted pursuant to this chapter.

(7) The fee for the renewal of a certificate shall be set by the department but may not be more than $150 or less than $75; however, until rules setting these fees are adopted by the department, the issuance fee and the renewal fee shall each be $75.

(8) A pest control operator's certificate is not transferable to another person.

(9) In the event of the loss of a certified operator in charge or other emergency, one or more emergency pest control certificates may be issued by the department, upon the request of the licensee, to one or more designated identification cardholders for a period of 30 days. The department may issue additional emergency certificates to one or more designated identification cardholders for periods not exceeding 30 days, for up to a maximum of 1 year. The sum of the periods for which emergency certificates are issued to the same licensee may not exceed 1 year during any 3-year period except in the event of the death of a certified operator in charge, in which case, additional emergency certificates may be issued for an extension of up to 120 days. The department shall collect $50 for each emergency certificate issued. Upon request by the department, the licensee shall submit interim reports at 30-day intervals containing documented evidence indicating specific actions being taken by the licensee to fill the vacancy created by the loss of a certified operator in charge. The department shall adopt rules and prescribe forms for this purpose; however, an emergency certificate may not be issued in the category of fumigation.

(10) Prior to the expiration date of a certificate, the certificateholder must complete 2 hours of approved continuing education on legislation, safety, pesticide labeling, and integrated pest management and 2 hours of approved continuing education in each category of his certificate or must pass an examination given by the department. The department may not renew a certificate if the continuing education or examination requirement is not met.

(a) Courses or programs, to be considered for credit, must include one or more of the following topics:

1. The law and rules of this state pertaining to pest control.

2. Precautions necessary to safeguard life, health, and property in the conducting of pest control and the application of pesticides.

3. Pests, their habits, recognition of the damage they cause, and identification of them by accepted common name.

4. Current accepted industry practices in the conducting of fumigation, termites and other wood-destroying organisms pest control, lawn and ornamental pest control, and household pest control.

5. How to read labels, a review of current state and federal laws on labeling, and a review of changes in or additions to labels used in pest control.

6. Integrated pest management.

(b) The certificateholder must submit with his application for renewal a statement certifying that he has completed the required number of hours of continuing education. The statement must be on a form prescribed by the department and must identify at least the date, location, provider, and subject of the training and must provide such other information as required by the department.

(c) The department shall charge the same fee for examination as provided in s. 482.141(2).

(11) When a certified operator becomes a member of the Armed Forces of the United States on active duty, the renewal fee and continuing education requirements are waived while the individual remains on active duty as a member of the armed forces. If the individual is designated as the certified operator in charge and no other certified operator is available to be placed in charge, an emergency certificate may be granted without a time or fee requirement until the certified operator is no longer on active duty.

## 10B482.121 Misuse of certificate.

(1) A certified operator may not allow his certificate to be used by a licensee to secure or keep a license unless:

(a) He is in charge of the pest control activities of the licensee in the category or categories covered by his certificate;

(b) He is a full-time employee of the licensee; and

(c) His primary occupation is with the licensee.

(2) A licensee may not use the certificate of any certified operator to secure or keep a license unless the holder of the certificate is in charge of the pest control activities in the category or categories of the licensee covered by the certificate.

(3) If a certificate is used in violation of this section, the department may revoke the license of the pest control business or the certified operator's certificate, or both such license and certificate.

## 11B482.132 Qualifications for examination and certification.

(1) The department may award a pest control operator's certificate to an individual who has passed the examinations prescribed by the department and who submits to the department proof that he is not under the disability of minority and that he is qualified to be a certified operator with regard to the safety of persons and property, and is otherwise qualified under the provisions of this chapter and the rules made pursuant to this chapter.

(2) Each applicant for examination for a pest control operator's certificate must possess the minimum qualifications specified in one of the following paragraphs:

(a) Three years' employment as a service employee of a licensee that performs pest control in the category or categories in which the applicant seeks certification, 1 year of which employment must have been completed in this state during the year immediately preceding application for examination.

(b) A degree with advanced training or a major in entomology, botany, agronomy, or horticulture from a recognized college or university, which training or major included the completion of at least 20 semester hours or 30 quarter hours of college credits in those subjects, plus 1 year's employment as a service employee of a licensee that performs pest control in the category or categories in which the applicant seeks certification or the successful completion of a 1-year entomology program at a public university in this state which specializes in urban pest management and includes practical pest management experience. If such advanced training or major is in entomology, the applicant is qualified for examination in all categories; but if such advanced training or major is in botany, agronomy, or horticulture, the applicant is qualified for examination only in the category of lawn and ornamental pest control.

(c) A 2-year degree in horticultural technology or the equivalent from a college or university, with advanced training of 20 or more semester hours or 30 or more quarter hours of credit in horticulture, plus 1 year's employment as a service employee of a licensee that performs pest control only in the category of lawn and ornamental pest control. Such an applicant is qualified for examination only in the category of lawn and ornamental pest control.

(d) A 2-year degree in general pest control technology or the equivalent from a college or university, with advanced training of 20 or more semester hours or 30 or more quarter hours of credit in entomology, plus 1 year of employment as a service employee of a licensee that performs pest control in any category or categories. Such an applicant is qualified for all examinations.

(e) Twenty-four semester hours or 36 quarter hours of courses in entomology, pest control technology, and related subjects, plus 1 year of employment as a service employee of a licensee that performs pest control in the category of general household pest, termite, and fumigation. Such an applicant is qualified only for examination in the categories of general household pest control, termite and other wood-destroying organisms pest control, and fumigation.

(f) Twenty-four semester hours or 36 quarter hours of courses in entomology, pest control technology, agronomy, botany, horticulture, and related subjects, plus 1 year of employment as a service employee of a licensee that performs pest control in the category of lawn and ornamental pest control. Such an applicant is qualified only for examination in the category of lawn and ornamental pest control.

(g) Three years' full-time employment as a service employee of the United States Department of Defense, who has been certified to perform pest control in the category or categories in which the applicant seeks certification, 1 year of which employment must have been completed in this state during the year immediately preceding application for examination. Additionally, the application for certification must be submitted to the Department of Agriculture and Consumer Services within 12 months after the date of termination of employment from the Department of Defense.

(3) In addition, each applicant must have knowledge of practical and scientific facts of pest control and be a graduate of an accredited high school or submit to the department satisfactory evidence of equivalent education.

## 12B482.141 Examinations.

(1) Each individual seeking certification must satisfactorily pass an examination which must be written but which may include practical demonstration. The department shall hold at least two examinations each year. An applicant may seek certification in one or more categories.

(2) An application for examination must be made in accordance with the rules of the department. Each application must be accompanied by a fee set by the department, in an amount of not more than $300 or less than $150, for each category in which the applicant desires to be examined; however, until rules setting these fees are adopted by the department, the examination fee for each category shall be $150. Any applicant who fails to pass one or more categories may reapply for examination upon the payment of the applicable fee for each category in which the applicant seeks reexamination.

(3) The department shall give an examination in each category for which application is made which tests the applicant's knowledge of pest control as applicable to that category. The certificate issued must state the categories allowed thereby.

(4) A refund of examination fees may not be made unless the applicant presents written evidence that he was under military orders, on jury duty or otherwise subpoenaed, or under medical care which precluded his reporting to take the examination, in which case the department shall exercise its discretion as to a refund.

## 13B482.151 Special identification card for performance of fumigation.

(1) Any individual who performs fumigation must be a special identification cardholder, unless such individual is a certified operator who is certified in the category of fumigation. When performing fumigation, a special identification cardholder or certified operator may act only under the direction and supervision of the certified operator in charge.

(2) The department shall prescribe by rule the qualifications, privileges, duties, and limitations of holders of special identification cards.

(3) The department may issue special identification cards to qualified individuals who pass written examinations that may include practical demonstration. The application forms shall be prescribed by the department.

(4) The department, in its rules, shall provide for such matters as required qualifications for applicants for examination, written or practical phases or categories of examinations, and time of examinations. The fee for an examination shall be set by the department but may not be more than $200 or less than $100 for each category; however, until rules setting these fees are adopted by the department, the fee for each category shall be $100.

(5) An application must be made and the issuance fee paid to the department for an original special identification card within 60 days after the postmark date of written notification of passing the examination. The fee for issuance of an original special identification card shall be set by the department but may not be more than $100 or less than $50; however, until a rule setting this fee is adopted by the department, the fee shall be $50. During a period of 30 days following expiration of the 60-day period, an original special identification card may be issued; however, the department shall assess a late issuance charge of $25, which must be paid in addition to the issuance fee. An original special identification card may not be issued after expiration of the 30-day period, without reexamination.

(6) An application to the department for renewal of a special identification card must be made on or before an anniversary date set by the department. The fee for renewal of a special identification card shall be set by the department but may not be more than $100 or less than $50; however, until a rule setting this fee is adopted by the department, the renewal fee shall be $50. After a grace period not exceeding 30 calendar days following such renewal date, the department shall assess a late renewal charge of $25, which must be paid in addition to the renewal fee.

(7) Unless timely renewed, a special identification card automatically expires 180 calendar days after the anniversary renewal date. Subsequent to such expiration, a special identification card may be issued only upon successful reexamination and upon payment of examination and issuance fees due, as provided in this section.

(8) Prior to the expiration date of a special identification card, the cardholder must:

(a) Complete 2 hours of approved continuing education on legislation, safety, and pesticide labeling and 2 hours of approved continuing education in the fumigation category; or

(b) Pass an examination in fumigation given by the department.

(9) If a special identification cardholder becomes a member of the Armed Forces of the United States on active duty, the renewal fee and continuing education requirements are waived while the individual remains on active duty as a member of the Armed Forces.

## 14B482.152 Duties of certified operator in charge of pest control activities of licensee.

A certified operator in charge of the pest control activities of a licensee shall have his primary occupation with the licensee and shall be a full-time employee of the licensee, and his principal duty shall include the responsibility for the personal supervision of and participation in the pest control activities at the business location of the licensee as the same relate to:

(1) The selection of proper and correct chemicals for the particular pest control work performed.

(2) The safe and proper use of the pesticides used.

(3) The correct concentration and formulation of pesticides used in all pest control work performed.

(4) The training of personnel in the proper and acceptable methods of pest control.

(5) The control measures and procedures used.

(6) The notification of the department of any accidental human poisoning or death connected with pest control work performed on a job he is supervising, within 24 hours after he has knowledge of the poisoning or death.

## 15B482.155 Limited certification for governmental pesticide applicators or private applicators.

(1) (a) The department shall establish limited certification categories for:

1. Persons who apply pesticides only as governmental employees.

2. Persons who apply pesticides only to their own private property, and employees who apply pesticides to private property owned by their employers. This includes properties such as public buildings, schools, hospitals, nursing homes, grocery stores, restaurants, apartments, and common areas of condominiums and any other private properties where the public may be exposed to pesticide applications.

(b) A person seeking limited certification under this subsection must pass an examination given or approved by the department. Each application for examination must be accompanied by an examination fee set by the department, in an amount of not more than $150 or less than $50; and a recertification fee of $25 every 4 years. Until rules setting these fees are adopted by the department, the examination fee is $50. Application for recertification must be accompanied by proof of having completed 4 classroom hours of acceptable continuing education. The department shall provide the appropriate reference material and make the examination readily accessible and available to all applicants at least quarterly or as necessary in each county.

(c) Certification obtained under this subsection does not authorize operation of a pest control business.

(2) In lieu of obtaining limited certification under subsection (1), a governmental employee or private property applicator may apply pesticides if he is trained and supervised by a

certified operator who is certified by the department in the categories of pest control that are performed by the employee or applicator and who is employed full time by the governmental agency or private property owner for which the pest control is performed.

(3) A person who applies pesticides under this section shall maintain, for a period of at least 2 years, routine operational records containing information pertaining to each application of a restricted-use pesticide including the name of the applicator and the type, amount, use, date, and place of application.

(4) This section does not apply to the application of disinfectants, sanitizers, or ready-to-use pesticides sold over the counter at retail.

(5) A limited certification granted under this section does not authorize the performance of fumigation of a structure.

## 16B482.156 Limited certification for commercial landscape maintenance personnel.

(1) The department shall establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to apply herbicides for controlling weeds in plant beds and to perform integrated pest management on ornamental plants using insecticides and fungicides having the signal word "caution" but not having the word "warning" or "danger" on the label. The application equipment that may be used by a person certified pursuant to this section is limited to portable, handheld 3-gallon compressed air sprayers or backpack sprayers having no more than a 5-gallon capacity and does not include power equipment.

(2) (a) A person seeking limited certification under this section must pass an examination given by the department. Each application for examination must be accompanied by an examination fee set by rule of the department, in an amount of not more than $150 or less than $50. Prior to the department’s issuing a limited certification under this section, each person applying for the certification must furnish proof of having a certificate of insurance which states that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage required by s. 482.071(4).

(b) To be eligible to take the examination, an applicant must have completed 6 classroom hours of plant bed and ornamental continuing education training approved by the department and provide sufficient proof, according to criteria established by department rule.

The department shall provide the appropriate reference materials for the examination and make the examination readily accessible and available to applicants at least quarterly or as necessary in each county.

(3) An application for recertification under this section must be made annually and be accompanied by a recertification fee set by rule of the department, in an amount of not more than $75 or less than $25. The application must also be accompanied by proof of having completed 4 classroom hours of acceptable continuing education and the same proof of having a certificate of insurance as is required for issuance of this certification.

After a grace period not exceeding 30 calendar days following the annual date that recertification is due, a late renewal charge of $50 shall be assessed and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.

(4) Certification under this section does not authorize:

(a) Application of pesticides to turf;

(b) Operation of a pest control business; or

(c) The application of pesticides by unlicensed or uncertified personnel under the supervision of the certified person.

(5) A person certified under this section shall maintain records documenting the pests and areas treated, plus the methods and materials applied for control of such pests, which records must be available for review by the department upon request.

## 482.1562 Limited certification for urban landscape commercial fertilizer application.—

(1) To provide a means of documenting and ensuring compliance with best-management practices for commercial fertilizer application to urban landscapes, the department shall establish a limited certification for urban landscape commercial fertilizer application.

(2) Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified under this section.

(3) To obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to the department:

(a) A copy of the training certificate issued pursuant to s. 403.9338.

(b) A certification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(4) A limited certification for urban landscape commercial fertilizer application issued under this section expires 4 years after the date of issuance. Before applying for recertification under subsection (5), the applicant must complete 4 classroom hours of acceptable continuing education, of which at least 2 hours address fertilizer best-management practices.

(5) An application for recertification must be made 4 years after the date of issuance of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) Upon expiration, or after a grace period that does not exceed 30 days after expiration, a certificate may be issued only upon reapplying in accordance with subsection (3).

(7) Certification under this section does not authorize:

(a) The application of pesticides to turf or ornamentals, including pesticide fertilizer mixtures;

(b) The operation of a pest control business; or

(c) The application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

(8) The department may provide information concerning the certification status of persons certified under this section to other local and state governmental agencies. The department is encouraged to create an online data base that lists all persons certified under this section.

(9) Yard workers who apply fertilizer only to individual residential properties using fertilizer and equipment provided by the residential property owner or resident are exempt from the requirements of this section.

(10) The department may adopt rules to administer this section.

## 482.157 Limited certification for commercial wildlife management personnel.

(1) The department shall establish a limited certificate that authorizes a person who engages in the commercial trapping of wildlife to use nonchemical methods, including traps, mechanical or electronic devices, and exclusionary techniques to control commensal rodents.

(2) The department shall issue a limited certificate to an applicant who:

(a) Submits an application and examination fee of at least $150, but not more than $300, as prescribed by the department by rule;

(b) Passes an examination administered by the department. The department shall provide the appropriate study materials for the examination and make the examination readily available to applicants in each county as necessary, but not less frequently than quarterly; and

(c) Provides proof, including a certificate of insurance, that the applicant has met the minimum bodily injury and property damage insurance requirements in s. 482.071(4).

(3) An application for recertification must be made annually and be accompanied by a recertification fee of at least $75, but not more than $150, as prescribed by the department by rule. The application must also be accompanied by proof of completion of the required 4 classroom hours of acceptable continuing education and the required proof of insurance. After a grace period not exceeding 30 calendar days after the recertification renewal date, the department shall assess a late fee of $50 in addition to the renewal fee. A certificate automatically expires 180 days after the recertification date if the renewal fee has not been paid. After expiration, the department shall issue a new certificate only if the applicant successfully passes a reexamination and pays the examination fee and late fee.

(4) Certification under this section does not authorize:

(a) The use of pesticides or chemical substances, other than adhesive materials, to control rodents or other nuisance wildlife in, on, or under structures;

(b) Operation of a pest control business; or

(c) Supervision of an uncertified person using nonchemical methods to control rodents.

## 18B482.161 Disciplinary grounds and actions; reinstatement.

(1) The department may issue a written warning to or impose a fine against, or deny the application for licensure or licensure renewal of, a licensee, certified operator, limited certificateholder, identification cardholder, or special identification cardholder or any other person, or may suspend, revoke, or deny the issuance or renewal of any license, certificate, limited certificate, identification card, or special identification card that is within the scope of this chapter, in accordance with chapter 120, upon any of the following grounds:

(a) Violation of any provision of this chapter or of any rule of the department adopted pursuant to this chapter.

(b) Conviction in any court within this state of a violation of any provision of this chapter.

(c) Habitual intemperance or addiction to narcotics.

(d) Conviction in any court in any state or in any federal court of a felony, unless civil rights have been restored.

(e) Knowingly making false or fraudulent claims with respect to pest control; knowingly misrepresenting the effects of materials or methods used in pest control; or knowingly failing to use materials or methods suitable for the pest control undertaken.

(f) Performing pest control in a negligent manner.

(g) Failure to give to the department, or authorized representative thereof, true information upon request regarding methods and materials used, work performed, or other information essential to the administration of this chapter.

(h) Fraudulent or misleading advertising relative to pest control or advertising in an unauthorized category of pest control.

(i) Failure to pay an administrative fine imposed pursuant to subsection (7).

(j) Impersonation of a department employee.

(2) A revocation or suspension of a license, certificate, or limited certificate is effective for all categories unless the department, in its sole discretion, suspends or revokes fewer than all categories thereof.

(3) Three years after a revocation, application may be made to the department for

reinstatement; and the department may authorize reinstatement.

(4) Any charge of a violation of this chapter or of the rules adopted pursuant to this chapter by a licensee affects only the license or permit of the business location from which the violation is alleged to have occurred. Another license or permit may not be issued to the same licensee, or to any person who has an ownership interest in the suspended or revoked business license of the licensee and who knew or should have known of the violation that resulted in the suspension or revocation, for a new business location in the same county or any contiguous county for a period of 3 years after the effective date of the suspension or revocation.

(5) If, after appropriate hearing in accordance with chapter 120, the department finds that a licensee, certified operator, limited certificateholder, identification cardholder, or special identification cardholder has committed any act described in subsection (1), but further finds that such act is of such nature or occurred under such circumstances that suspension or revocation of the license, certificate, limited certificate, identification card, or special identification card would either be detrimental to the public or be unnecessarily harsh under the circumstances, it may, in lieu of executing the order of suspension or revocation, either:

(a) Reprimand the party publicly or privately; or

(b) Place the party on probation for a period of not more than 2 years.

(6) (a) If the department finds that the terms of any such probation have been violated, it may revoke the probation order immediately; and its initial order takes effect.

(b) If a person is found by the department to have violated any of the other terms of this chapter or of the rules adopted pursuant to this chapter, the department may declare such probation revoked; and, in its proceeding with regard to such additional violation, the department may consider the violation for which probation is in effect in determining the extent of its order with regard to such additional violation.

(7) The department, pursuant to chapter 120, in addition to or in lieu of any other remedy provided by state or local law, may impose an administrative fine in the Class II category pursuant to s. 570.971, for a violation of this chapter or of the rules adopted pursuant to this chapter. In determining the amount of fine to be levied for a violation, the following factors shall be considered:

(a) The severity of the violation, including the probability that the death, or serious harm to the health or safety, of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which this chapter or the rules adopted pursuant to this chapter were violated;

(b) Any actions taken by the licensee or certified operator in charge, or limited certificateholder, to correct the violation or to remedy complaints;

(c) Any previous violations of this chapter or of the rules adopted pursuant to this chapter; and

(d) The cost to the department of investigating the violation.

(8) A hearing officer may, in lieu of or in addition to imposition of a fine, recommend probation or public or private reprimand. A public reprimand must be made in a newspaper of general circulation in the county of the licensee.

(9) The department shall publish quarterly a list of disciplinary actions taken pursuant to this section and shall provide such list to each licensee.

(10) The department may require any licensee disciplined for a violation of s. 482.226 to submit to the department reports for wood-destroying organism inspections and treatments performed. These reports must be submitted at such times as required by the department but not more frequently than once a week.

## 19B

## 482.163 Responsibility for pest control activities of employee.

Proper performance of pest control activities by a pest control business employee is the responsibility not only of the employee but also of the certified operator in charge, and the certified operator in charge may be disciplined pursuant to the provisions of s. 482.161 for the pest control activities of an employee. A licensee may not automatically be considered responsible for violations made by an employee. However, the licensee may not knowingly encourage, aid, or abet violations of this chapter.

## 20B482.165 Unlicensed practice of pest control; cease and desist order; injunction; civil suit and penalty.

(1) It is unlawful for a person, partnership, firm, corporation, or other business entity not licensed by the department to practice pest control.

(2) If the department has probable cause to believe that a person, partnership, firm, corporation, or other business entity not licensed by the department to practice pest control has violated any provision of this chapter, the department shall issue and deliver to that person, partnership, firm, corporation, or other business entity a notice to cease and desist from such violation. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person, partnership, firm, corporation, or other business entity that violates any provision of the order.

(3) In addition to or in lieu of any remedy provided under subsection (2), the department may institute a civil suit in circuit court to recover a civil penalty for any violation for which the department may issue a notice to cease and desist under subsection (2). The civil penalty shall be in the Class II category pursuant to s. 570.971 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees.

(4) The violation or disregard of a cease and desist order issued for the purpose of terminating unlicensed pest control activities is a ground for denial of a license or certificate when applied for.

(5) In addition to or in lieu of any remedy provided under subsections (2) and (3), the department may, even in the case of a first offense, impose a fine not less than twice the cost of a pest control business license, but not more than a fine in the Class II category pursuant to s. 570.971, upon a determination by the department that a person is in violation of subsection (1). For the purposes of this subsection, the lapse of a previously issued license for a period of less than 1 year is not considered a violation.

## 21B482.1821 Closing pest control business without providing for contracts and liabilities.

A licensee may not close its pest control business and open up a new pest control business under a different name without providing for meeting or satisfying its outstanding pest control contracts and liabilities. However, the department may waive this requirement if the licensee has filed for bankruptcy and reached agreement with its creditors on the terms for disposing of existing debts and obligations.

## 22B482.183 Limitations.

(1) (a) A person may not be charged with a violation of this chapter or any rule adopted pursuant to this chapter more than 3 years after the date of the violation.

(b) For the purpose of this subsection, a charge of violation is considered to have been made upon the issuance of a notice or citation by the department charging such violation.

(2) A person licensed or certified under this chapter who practices accepted pest control methods is immune from liability under s. 828.12.

(3) This chapter does not exempt a person from the rules, regulations, or orders of the Fish and Wildlife Conservation Commission.

## 23B482.191 Violation and penalty.

(1) It is unlawful to solicit, practice, perform, or advertise in pest control except as provided by this chapter.

(2) A person who violates any provision of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who violates any rule of the department relative to pest control is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## 24B482.211 Exemptions.

This chapter does not apply to:

(1) Pest control, except for fumigation, performed by a person upon his own individual residential property.

(2) Pest control performed on a United States Department of Defense installation or other federal property, except as outlined in the memorandum of agreement between the Department of Agriculture and Consumer Services and the United States Department of Defense.

(3) Pest control performed in greenhouses, in plant nurseries, or on agricultural crops, trees, groves, or orchards.

(4) Aerial application of pesticides.

(5) Aquatic weed control.

(6) Other weed control not specifically regulated by this chapter.

(7) Mosquito control activities conducted by a local government or district established under chapter 388 or by special act or by a contractor of the local government or district.

(8) Pest control performed for lawns and ornamental plants which is performed on an agricultural area.

(9) The use of wood preservatives during the manufacturing process when applied only on wood, pretreated lumber, or metal shields for use in the construction of structures.

(10) The use of the antibiotic oxytetracycline hydrochloride or other antibiotic for the control of lethal yellowing.

(11) A yardman when applying a pesticide to the lawn or ornamental plants of an individual residential property owner using pesticides owned and supplied by the individual residential property owner, provided the yardman does not advertise for or solicit pest control business and does not hold himself out to the public as being engaged in pest control. The yardman may not supply his own pesticide application equipment, use pesticide-applying power equipment, or use any equipment other than a handheld container when applying the pesticide.

## 25B482.226 Wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.

(1) When an inspection for wood-destroying organisms is made by a licensee for purposes of a real estate transaction and either a fee is charged for the inspection or a written report is requested by the customer, a wood-destroying organism inspection report shall be provided by the licensee or its representative qualified under this chapter to perform such inspections. The inspection shall be made in accordance with good industry practice and standards as established by rule and must include inspection for all wood-destroying organisms. The inspection findings shall be reported to the person requesting the inspection. The report must be made on a form prescribed by the department and furnished by the licensee. A copy of the inspection report shall be retained by the licensee for a period of not less than 3 years.

(2) (a) The inspection report must include the following information and statements:

1. The licensee's name.

2. The date of the inspection.

3. The address of the structure inspected.

4. Any visible accessible areas not inspected and the reasons for not inspecting them.

5. The areas of the structure that were inaccessible.

6. Any visible evidence of previous treatments for, or infestations of, wood-destroying organisms.

7. The identity of any wood-destroying organisms present and any visible damage caused.

8. A statement that a notice of the inspection has been affixed to the property in accordance with subsection (4) or subsection (5) and a statement of the location of the notice.

(b) If any pest control treatment is provided at the time of the inspection, the inspection report must also provide the name of each of the wood-destroying organisms for which treatment was provided, the name of the pesticide used, and all conditions and terms associated with that treatment.

(c) An inspection report does not constitute a guarantee of the absence of wood-destroying organisms or damage therefrom or other evidence unless the report specifically states therein the extent of such guarantee.

(d) The inspection report must also include a statement certifying that neither the inspector nor the licensee by whom the inspection is made has any financial interest in the property inspected or is associated in any way in the transaction with any party to the transaction other than for inspection purposes.

(3) If periodic reinspections or retreatments are specified in wood-destroying organisms preventive or control contracts, the licensee shall furnish the property owner or his authorized agent, after each such reinspection or retreatment, a signed report indicating the presence or absence of wood-destroying organisms covered by the contract, whether retreatment was made, and the common or brand name of the pesticide used. Such report need not be on a form prescribed by the department. A person may not perform periodic reinspections or retreatments unless he has an identification card issued under s. 482.091(9).

(4) When a wood-destroying organism inspection is provided in accordance with subsection (1), the licensee shall post notice of such inspection immediately adjacent to the access to the attic or crawl area or other readily accessible area of the property inspected. This notice must be at least 3 inches by 5 inches in size and must consist of a material that will last at least 3 years. It is a violation of this chapter for anyone other than the property owner to remove such notice at any time. The licensee's name and address and the date of inspection must be stated on the notice.

(5) In addition to the notice required by subsection (4), any licensee who performs control of any wood-destroying organism shall post notice of such treatment immediately adjacent to the access to the attic or crawl area or other readily accessible area of the property treated. This notice must be at least 3 inches by 5 inches in size and must consist of a material that will last at least 3 years. It is a violation of this chapter for anyone other than the property owner to remove such notice at any time. The licensee's name and address, the date of treatment, the name of the pesticide used, and the wood-destroying organism for which treatment was performed must be stated on the notice. The contract for treatment between the licensee and the consumer must state the location of such notice.

(6) Any licensee that performs wood-destroying organism inspections in accordance with subsection (1) must meet minimum financial responsibility in the form of errors and omissions (professional liability) insurance coverage or bond in an amount no less than $500,000 in the aggregate and $250,000 per occurrence, or demonstrate that the licensee has equity or net worth of no less than $500,000 as determined by generally accepted accounting principles substantiated by a certified public accountant's review or certified audit. The licensee must show proof of meeting this requirement at the time of license application or renewal thereof.

## 26B482.2265 Consumer information; notice of application of pesticide.

(1) Any person, partnership, firm, corporation, or other business entity that is licensed or certified under this chapter to engage in the business of pest control, or any other person who is a limited certificateholder under this chapter, shall, upon request, provide a customer of its pest control services with the following information:

(a) The business name of the licensee or certificateholder or the name of the limited certificateholder.

(b) The identification card number of the person applying the pesticide or, if a limited certificateholder, the name of that person.

(c) The common or brand name of the pesticide to be used and the common name of the active ingredient in that pesticide.

(d) Appropriate safety information pertaining to the pesticide product to be used, as provided on the label for that product.

(2) Any person who is licensed or certified under this chapter, including any person who is a limited certificateholder, shall post a notice in a conspicuous location at the time of application of a pesticide to a lawn or to exterior foliage. The department shall provide for the wording and physical makeup of such notice by rule, but the notice must:

(a) Be at least 4 inches by 5 inches in size;

(b) Be constructed of rigid, durable weatherproof material;

(c) Have a background and lettering of contrasting colors; and

(d) Clearly set forth the business name of the licensee or name of the limited certificateholder making the pesticide application.

The notice may be made part of a larger sign containing additional information, but the department may not require a sign larger than 4 inches by 5 inches unless the licensee or limited certificateholder seeks to include additional information on the sign.

## 27B482.2267 Registry of persons requiring prior notification of the application of pesticides.

(1) The department shall maintain a current registry of persons requiring prior notification of the application of pesticides. Upon request, the department shall register any person who pays an initial registration fee of $50 and submits to the department a certificate signed by a physician licensed pursuant to chapter 458, stating:

(a) That the physician has examined the person and determined that the placement of the person on the registry for prior notification of the application of a pesticide or class of pesticides is necessary to protect that person's health;

(b) Whether the physician is board certified by the American Board of Medical 1 Specialties in allergy, toxicology, or occupational medicine;

(c) The distance surrounding the person's primary residence for which the person requires prior notification of the application of a pesticide or class of pesticides in order to protect the person's health;

(d) The pesticide or class of pesticides for which the physician has determined that prior notification to the person is necessary to protect the person's health; and

(e) The license number of the physician.

(2) The distance specified pursuant to paragraph (1)(c) shall be limited to those properties adjacent and contiguous to the person's primary residence unless the physician is board certified in one of the specialties specified in paragraph (1)(b). In no event shall the distance exceed a «-mile radius of the boundaries of the person's primary residence and shall not exceed the minimum distance, as determined by the physician, required to protect the person's health.

(3) A person desiring to have his name continue to appear on the registry from year to year must submit an annual renewal fee of $10, and an annual update of the physician's certificate.

(4) The department shall notify all licensees and limited certificateholders quarterly of the following:

(a) The names and addresses of those persons who are currently registered;

(b) The pesticide or class of pesticides designated by the physician pursuant to paragraph (1)(d); and

(c) The distance notification designated by the physician pursuant to paragraph (1)(c).

(5) Before making a pesticide application to a lawn, plant bed, or exterior foliage within the area designated by the physician surrounding the property on which the primary residence of a registered person is located, a licensee or limited certificateholder must notify that person at least 24 hours before applying the pesticide. Notification may be made by telephone, by mail, in person, or by hand delivery. Notification shall include the location to which the pesticide is to be applied and must also include information on the type of pesticide to be used, except in an instance of pesticide application of a small amount on an infestation or disease that is discovered onsite at the time of treatment. It is the responsibility of a registrant under this section to notify the department of the addresses of the properties or residences that fall within the applicable contiguous, adjacent, or special-distance parameters for notification. The department shall supply this information to licensees and certificateholders.

(6) This section does not create any duties, liabilities, or obligations of licensees or certificateholders to registrants other than those expressly stated in this section.

(7) The application for registration and the physician's certificate required by this section must be in substantially the following form:

## 28BAPPLICATION FOR PRIOR NOTIFICATION OF PESTICIDE APPLICATIONS

PART A (To be completed by applicant)

1. Applicant's Name:

2. Date of Birth:

3. Applicant's Residence Address (not Post Office Box):

4. Applicant's phone number:

5. I am applying to the Department to be placed upon the registry requiring prior notification of pesticide applications pursuant to Section 482.2267, Florida Statutes.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant's Signature Date

PART B (To be completed by the physician)

I, the undersigned physician, certify to the following:

1. I have examined the person making application above and have determined that his or her placement on the registry for prior notification of the application of the pesticide(s) or class of pesticides set forth below is necessary to protect that person's health.

2. I [ ] am, [ ] am not, board certified and recognized by the American Board of Medical Specialties in one or more of the following medical specialties:

[ ] Allergy

[ ] Toxicology

[ ] Occupational medicine

3. My license number is:

4. The distance surrounding the person's primary residence for which the person requires prior notification of the application of the pesticide(s) or class of pesticides set forth below in order to protect the person's health is:

(Note: The distance specified shall be limited to those properties adjacent and contiguous to the person's primary residence unless the physician is board certified in one of the 1 specialties specified in paragraph 2 above. In any event, the distance may not exceed a «-mile radius of the boundaries of the property where the patient resides and must not exceed the minimum distance required to protect the applicant's health).

5. The pesticide(s) or class of pesticides for which I have determined that prior notification to the person of the application within the area indicated above is necessary to protect the person's health is (are):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Certifying Physician Date

(Print name of Certifying Physician)

(8) This act shall not be construed to create any additional requirements related to inclusion or continuance on the registry for those persons on the registry or who have applied to be on the registry as of July 1, 1995.

(9) False information knowingly provided shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and information in such form or certificate that the licensed physician knows, or should have known to be false, is grounds for disciplinary action pursuant to s. 458.331.

## 29B482.227 Guarantees and warranties.

(1) The Legislature finds that the terms “guarantee” and “warranty” are common in contracts for the treatment of wood-destroying organisms. The purpose of this section is to assure that contract language describing a “guarantee” or “warranty” is clear and easily identifiable for the protection of consumers and licensees. Therefore the following provisions shall apply to each new contract for the treatment of wood-destroying organisms issued by the licensee and signed by the customer.

(2) Any contract for treatment of wood-destroying organisms must specify on the first page in bold print that it is offered for repair and retreatment or for retreatment only or that no warranty or guarantee is offered.

(3) The contract for treatment of wood-destroying organisms must specify on the first page in bold print whether there are any disclaimers, limitations, conditions, or exclusions on the licensee’s obligation to repair or re-treat the property. Contract sections describing disclaimers, limitations, conditions, or exclusions applicable to the licensee’s obligation to repair or re-treat the property must contain headings in bold print.

(4) If a contract for treatment of wood-destroying organisms contains a disclaimer, limitation, condition, or exclusion applicable to the licensee’s obligation to repair or re-treat the property, the term “full” or “unlimited” may not be used together with the term “guarantee” or “warranty.”

## 30B482.231 Use of fogging machines.

Only a certified operator who is certified in the category of general household pest control, or an authorized employee of a licensee under the supervision of such an operator, may use a thermal-aerosol fogging machine in general household pest control.

## 31B482.2401 Disposition and use of revenues from fees and fines.

(1) All moneys collected or received by the department under this chapter shall be deposited in the Pest Control Trust Fund and, except as provided in subsection (3), shall be used by the department in carrying out the provisions of this chapter and in the education of the pest control industry.

(2) All expenditures authorized by this chapter shall be paid upon presentation of vouchers approved by the department.

(3) The department may use revenues from administrative fines to support contract research or education in pest control. If revenues are available to support such research or education,the department shall appoint a committee composed of pest control industry members which shall assist the department in establishing research or education priorities, in developing requests for proposals for bids, and in selecting research or education contractors from qualified bidders.

## 32B482.241 Liberal interpretation.

The provisions of this chapter shall be liberally construed in order to effectively carry them out in the interest of the public and its health, welfare, and safety.

## 33B482.242 Preemption.

(1) This chapter is intended as comprehensive and exclusive regulation of pest control in this state. The provisions of this chapter preempt to the state all regulation of the activities and operations of pest control services, including the pesticides used pursuant to labeling and registration approved under part I of chapter 487. No local government or political subdivision of the state may enact or enforce an ordinance that regulates pest control, except that the preemption in this section does not prohibit a local government or political subdivision from enacting an ordinance regarding any of the following:

(a) Local business taxes adopted pursuant to chapter 205.

(b) Land development regulations adopted pursuant to chapter 163 which include regulation of any aspect of development, including a subdivision, building construction, sign regulation or any other regulation concerning the development of land, or landscaping or tree protection ordinances which do not include pesticide application restrictions.

(c) Regulations that:

1. Require, for multi-complex dwellings in excess of 10 units, annual termite inspections for termite activity or damage, including Formosan termites, which must be performed by a person licensed under this chapter.

2. Require pest control treatments of structures that have termite activity or damage which must be performed by a person licensed under this chapter.

3. Require property owners or other persons to obtain inspections or pest control treatments performed by a person licensed under this chapter.

An ordinance by a local government or political subdivision which requires an annual inspection or pest control treatment must conform to current law.

(d) Protection of wellhead protection areas and high recharge areas.

(e) Hazardous materials reporting as set forth in part II of chapter 252, storage, and containment including as relating to stormwater management.

(f) Hazardous material unlawful discharge and disposal.

(g) Hazardous materials remediation.

(2) For the purposes of this section:

(a) "Hazardous materials" shall be as defined in s. 403.74 and chapter 252.

(b) "Wellhead protection area" means an area designated by local government to protect the groundwater source for a well intended for human consumption for a community water system and includes the surface and subsurface area surrounding such a potable water wellfield. The maximum boundaries of the wellfield shall be the zone of contribution and the minimum shall be 10 years' travel time. Differing levels of protection may be established within the protection area zones based upon an evaluation of the risk to human health and the environment. Wellhead protection areas shall be delineated using such methods as reasonable or calculated fixed radii, simplified variable shapes, analytical methods, hydrogeological mapping, numerical flow or transport models, or other professionally accepted methodologies.

(c) "High recharge area" means an area contributing a significant volume of water which adds to the storage of an aquifer through vertical flow. The term "significant" will vary geographically depending on the hydrologic characteristics of that aquifer. High recharge areas will receive higher protection than other areas due to their significance as current or future water use areas.

(d) "Zone of contribution" means the area surrounding a well pumping water for human consumption that encompasses all areas or features that supply groundwater recharge to the well as determined by the relevant water management district or the local government.

## 34B482.243 Pest Control Enforcement Advisory Council.—

(1) The Pest Control Enforcement Advisory Council is created within the department. The Commissioner of Agriculture shall appoint all members of the council. The purpose of the council is to advise the Commissioner of Agriculture regarding the regulation of pest control practices and to advise government agencies with respect to those activities related to their responsibilities regarding pest control. The council shall serve as the statewide forum for the coordination of pest control related activities to eliminate duplication of effort and maximize protection of the public.

(2) The council shall consist of 11 members as follows: a representative of the department; a citizen not involved in the conduct of pest control; a state university urban entomologist; and eight persons each holding a pest control operator's certificate issued under s. H[U482.111U](http://www.leg.state.fl.us/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0482/Sec111.htm&StatuteYear=2001)H, of whom two shall be actively involved in termite control, two shall be actively involved in general household pest control, two shall be actively involved in structural fumigation, and two shall be actively involved in lawn and landscape pest control. Each member shall be appointed for a term of 4 years and shall serve until a successor is appointed.

(3) In conducting its meetings, the council shall use Robert's Rules of Order. A majority of the members of the council constitutes a quorum for all purposes, and an act by a majority of such quorum at any meeting constitutes an official act of the council. The secretary shall keep a complete record of each meeting which must show the names of members present and the actions taken. These records must be kept on file with the department, and these records and other documents about matters within the jurisdiction of the council are subject to inspection by members of the council.

(4) The members of the council shall meet and organize by electing a chair, a vice chair, and a secretary whose terms shall be for 1 year each. Council officers may not serve consecutive terms.

(5) The council shall meet at the call of its chair, at the request of a majority of its members, at the request of the department, or at such time as a public health or environmental emergency arises.

(6) The meetings, powers and duties, procedures, and recordkeeping of the council shall be pursuant to.

(7) The council shall receive reports of pest control enforcement activity conducted by the Division of Agricultural Environmental Services, which shall include numbers of cases, numbers of administrative actions, numbers of complaints received and investigated, and dispositions of complaints; provide advice to the department on the conduct of pest control enforcement activities; receive reports on disciplinary actions, provided that the names of individual licensees shall be expunged from cases discussed before the council, unless a consent order or final order has been issued in the case; and make recommendations, subject to a majority vote, directly to the Commissioner of Agriculture for actions to be taken with respect to the regulation of pest control services and practices that the council has reviewed.

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# PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES

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# PART I GENERAL PROVISIONS

(Note: All references to the Department of Agriculture and Consumer Services and Commission of Agriculture are effective January 3, 2003. Until that date, the regulation is performed b the Department of State and the Secretary of State. --Compendium editor)

## 493.6100 Legislative intent.—

The Legislature recognizes that the private security, investigative, and recovery industries are rapidly expanding fields that require regulation to ensure that the interests of the public will be adequately served and protected. The Legislature recognizes that untrained persons, unlicensed persons or businesses, or persons who are not of good moral character engaged in the private security, investigative, and recovery industries are a threat to the welfare of the public if placed in positions of trust. Regulation of licensed and unlicensed persons and businesses engaged in these fields is therefore deemed necessary.

## 493.6101 Definitions.—

(1) “Department" means the Department of Agriculture and Consumer Services.

(2) “Person" means any individual, firm, company, agency, organization, partnership, or corporation.

(3) “Licensee" means any person licensed under this chapter.

(4) The personal pronoun “he" or the personal pronoun “she" implies the impersonal pronoun “it."

(5) “Principal officer" means an individual who holds the office of president, vice president, secretary, or treasurer in a corporation.

(6) “Advertising" means the submission of bids, contracting, or making known by any public notice or solicitation of business, directly or indirectly, that services regulated under this chapter are available for consideration.

(7) “Good moral character" means a personal history of honesty, fairness, and respect for the rights and property of others and for the laws of this state and nation.

(8) “Conviction" means an adjudication of guilt by a federal or state court resulting from plea or trial, regardless of whether imposition of sentence was suspended.

(9) “Unarmed" means that no firearm shall be carried by the licensee while providing services regulated by this chapter.

(10) “Branch office" means each additional location of an agency where business is actively conducted which advertises as performing or is engaged in the business authorized by the license.

(11) “Sponsor" means any Class “C," Class “MA," or Class “M" licensee who supervises and maintains under his or her direction and control a Class “CC" intern; or any Class “E" or Class “MR" licensee who supervises and maintains under his or her direction and control a Class “EE" intern.

(12) “Intern" means an individual who studies as a trainee or apprentice under the direction and control of a designated sponsoring licensee.

(13) “Manager" means any licensee who directs the activities of licensees at any agency or branch office. The manager shall be assigned to and shall primarily operate from the agency or branch office location for which he or she has been designated as manager. The manager of a private investigative agency may, however, manage up to three offices within a 150-mile radius of the location listed on the agency's Class "A" license, provided that these three offices consist of either:

(a) The location listed on the agency's Class "A" license and up to two branch offices; or

(b) Up to three branch offices.

(14) “Firearm instructor" means any Class “K" licensee who provides classroom or range instruction to applicants for a Class “G" license.

(15) “Private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.

(16) “Private investigator" means any individual who, for consideration, advertises as providing or performs private investigation. This does not include an informant who, on a one-time or limited basis, as a result of a unique expertise, ability, vocation, or special access and who, under the direction and control of a Class “C" licensee or a Class “MA" licensee, provides information or services that would otherwise be included in the definition of private investigation.

(17) “Private investigation" means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

(a) Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.

(b) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(c) The credibility of witnesses or other persons.

(d) The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.

(e) The location or recovery of lost or stolen property.

(f) The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.

(g) The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.

(18) “Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners. This includes any person who utilizes dogs and individuals to provide security services.

(19) “Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

(20) “Recovery agency" means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.

(21) “Recovery agent" means any individual who, for consideration, advertises as providing or performs repossessions.  
(22) “Repossession" means the recovery of a motor vehicle as defined under ss. 320.01(1), or mobile home as defined in ss. 320.01(2), or motorboat as defined under ss. 327.02, an aircraft as defined in s. 330.27(1), an aircraft as defined in s. 330.27(1), a personal watercraft as defined in s. 327.02, an all-terrain vehicle as defined in s. 316.2074, farm equipment as defined under s. 686.402, or industrial equipment, by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause. As used in this subsection, the term “industrial equipment” includes, but is not limited to, tractors, road rollers, cranes, fork lifts, backhoes, and bulldozers. The term “industrial equipment” also includes other vehicles that are propelled by power other than muscular power and that are used in the manufacture of goods or used in the provision of services. A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property. Property that is being repossessed shall be considered to be in the control, custody, and possession of a recovery agent if the property being repossessed is secured in preparation for transport from the site of the recovery by means of being attached to or placed on the towing or other transport vehicle or if the property being repossessed is being operated or about to be operated by an employee of the recovery agency.

(23) “Felony" means a criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in the state penitentiary; a crime in any other state or a crime against the United States which is designated as a felony; or an offense in any other state, territory, or country punishable by imprisonment for a term exceeding 1 year.

## 493.6102 Inapplicability of parts I through IV of this chapter.—

This chapter shall not apply to:

(1) Any individual who is an “officer" as defined in ss. 943.10(14) or is a law enforcement officer of the United States Government, while such local, state, or federal officer is engaged in her or his official duties or when performing off-duty security activities approved by her or his superiors.

(2) Any insurance investigator or adjuster licensed by a state or federal licensing authority when such person is providing services or expert advice within the scope of her or his license.

(3) Any individual solely, exclusively, and regularly employed as an unarmed investigator in connection with the business of her or his employer, when there exists an employer-employee relationship.

(4) Any unarmed individual engaged in security services who is employed exclusively to work on the premises of her or his employer, or in connection with the business of her or his employer, when there exists an employer-employee relationship.

(5) Any person or bureau whose business is exclusively the furnishing of information concerning the business and financial standing and credit responsibility of persons or the financial habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit.

(6) Any attorney in the regular practice of her or his profession.

(7) Any bank or bank holding company, credit union, or small loan company operating pursuant to chapters 516 and 520; any consumer credit reporting agency regulated under 15 U.S.C. ss. 1681 et seq.; or any collection agency not engaged in repossessions or to any permanent employee thereof.

(8) Any person who holds a professional license under the laws of this state when such person is providing services or expert advice in the profession or occupation in which that person is so licensed.

(9) Any security agency or private investigative agency, and employees thereof, performing contractual security or investigative services solely and exclusively for any agency of the United States.

(10) Any person duly authorized by the laws of this state to operate a central burglar or fire alarm business. However, such persons are not exempt to the extent they perform services requiring licensure or registration under this chapter.

(11) Any person or company retained by a food service establishment to independently evaluate the food service establishment including quality of food, service, and facility. However, such persons are not exempt to the extent they investigate or are retained to investigate criminal or suspected criminal behavior on the part of the food service establishment employees.

(12) Any person who is a school crossing guard employed by a third party hired by a city or county and trained in accordance with ss. 316.75.

(13) Any individual employed as a security officer by a church or ecclesiastical or denominational organization having an established physical place of worship in this state at which nonprofit religious services and activities are regularly conducted or by a church cemetery to provide security on the property of the organization or cemetery, and who does not carry a firearm in the course of her or his duties.

(14) Any person or firm that solely and exclusively conducts genealogical research, or otherwise traces lineage or ancestry, by primarily utilizing public records and historical information and databases.

(15) Any licensed Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473.

## 493.6103 Authority to make rules.—

The department shall adopt rules necessary to administer this chapter. However, no rule shall be adopted that unreasonably restricts competition or the availability of services requiring licensure pursuant to this chapter or that unnecessarily increases the cost of such services without a corresponding or equivalent public benefit.

**493.61035 Credit for relevant military training and education.—**

(1) The department shall provide a method by which honorably discharged veterans may apply for licensure. The method must include:

(a) To the fullest extent possible, credit toward the requirements for licensure for military training and education received and completed during service in the United States Armed Forces if the military training or education is substantially similar to the training or education required for licensure.

(b) Identification of overlaps and gaps between the requirements for licensure and the military training or education received and completed by the veteran, and subsequent notification to the veteran of the overlaps and gaps.

(c) Assistance in identifying programs that offer training and education needed to meet the requirements for licensure.

(2) Notwithstanding any other provision of law, beginning October 1, 2017, and annually thereafter, the department is directed to prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. In addition to any other information that the Legislature may require, the report must include statistics and relevant information which detail:

(a) The number of applicants who identified themselves as veterans.

(b) The number of veterans whose application for a license was approved.

(c) The number of veterans whose application for a license was denied, including the reasons for denial.

(d) Data on the application processing times for veterans.

(e) The department’s efforts to assist veterans in identifying programs that offer training and education needed to meet the requirements for licensure.

(f) The department’s identification of the most common overlaps and gaps between the requirements for licensure and the military training and education received and completed by the veterans.

(g) Recommendations on ways to improve the department’s ability to meet the needs of veterans which would effectively address the challenges that veterans face when separating from military service and seeking a license for a profession or occupation regulated by the department pursuant to this chapter.

## 493.6104 Advisory council.—

(1) The department shall designate an advisory council, known as the Private Investigation, Recovery, and Security Advisory Council, to be composed of 11 members. One member must be an active law enforcement officer, certified under the Florida Criminal Justice Standards and Training Commission, representing a statewide law enforcement agency or statewide association of law enforcement agencies. One member must be the owner or operator of a business that regularly contracts with Class “A," Class “B," or Class “R" agencies. Nine members must be geographically distributed, insofar as possible, and must be licensed pursuant to this chapter. Two members must be from the security profession, one of whom represents an agency that employs 20 security guards or fewer; two members must be from the private investigative profession, one of whom represents an agency that employs five investigators or fewer; one member shall be from the repossession profession; and the remaining four members may be drawn from any of the professions regulated under this chapter.

(2) Council members shall be appointed by the Commissioner of Agriculture for a 4-year term. In the event of an appointment to fill an unexpired term, the appointment shall be for no longer than the remainder of the unexpired term. No member may serve more than two full consecutive terms. Members may be removed by the Commissioner of Agriculture for cause. Cause shall include, but is not limited to, absences from two consecutive meetings.

(3) Members shall elect a chairperson annually. No member may serve as chairperson more than twice.

(4) The council shall meet at least 4 times yearly upon the call of the chairperson, at the request of a majority of the membership, or at the request of the department. Notice of council meetings and the agenda shall be published in the Florida Administrative Register at least 14 days prior to such meeting.

(5) The council shall advise the department and make recommendations relative to the regulation of the security, investigative, and recovery industries.

(6) A quorum of six members shall be necessary for a meeting to convene or continue. All official action taken by the council shall be by simple majority of those members present. Members may not participate or vote by proxy. Meetings shall be recorded, and minutes of the meetings shall be maintained by the department.

(7) The director of the Division of Licensing or the director's designee shall serve, in a nonvoting capacity, as secretary to the council. The Division of Licensing shall provide all administrative and legal support required by the council in the conduct of its official business.

## 493.6105 Initial application for license.—

(1) Each individual, partner, or principal officer in a corporation, shall file with the department a complete application accompanied by an application fee not to exceed $60, except that an applicant for a Class “D” or Class “G” license is not required to submit an application fee. An application fee is not required for an applicant who qualifies for the fee waiver in s. [493.6107](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0493/Sections/0493.6107.html)(6). The application fee is not refundable.

(a) The application submitted by any individual, partner, or corporate officer must be approved by the department before the individual, partner, or corporate officer assumes his or her duties.

(b) Individuals who invest in the ownership of a licensed agency, but do not participate in, direct, or control the operations of the agency are not required to file an application.

(2) Each application must be signed and verified by the individual under oath as provided in s. 92.525.

(3) The application must contain the following information concerning the individual signing the application:

(a) Name and any aliases.

(b) Age and date of birth.

(c) Place of birth.

(d) Social security number or alien registration number, whichever is applicable.

(e) Current residence address and mailing address

(f) A statement of all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt. An applicant for a Class “G” or Class “K” license who is younger than 24 years of age shall also include a statement regarding any finding of having committed a delinquent act in any state, territory, or country which would be a felony if committed by an adult and which is punishable by imprisonment for a term exceeding 1 year.

(g) One passport-type color photograph taken within the 6 months immediately preceding submission of the application.

(h) A statement whether he or she has ever been adjudicated incompetent under chapter 744.

(i) A statement whether he or she has ever been committed to a mental institution under chapter 394.

(j) A full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee. The fingerprint processing and retention fees shall be established by rule of the department based upon costs determined by state and federal agency charges and department processing costs, which must include the cost of retaining the fingerprints in the statewide automated biometric identification system established in s. 943.05(2)(b) and the cost of enrolling the fingerprints in the national retained print arrest notification program as required under s. 493.6108. An applicant who has, within the immediately preceding 6 months, submitted such fingerprints and fees for licensing purposes under this chapter and who still holds a valid license is not required to submit another set of fingerprints or another fingerprint processing fee. An applicant who holds multiple licenses issued under this chapter is required to pay only a single fingerprint retention fee. Partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113 are exempt from the fingerprint retention requirements of this chapter.

(k) A personal inquiry waiver that allows the department to conduct necessary investigations to satisfy the requirements of this chapter.

(l) Such further facts as may be required by the department to show that the individual signing the application is of good moral character and qualified by experience and training to satisfy the requirements of this chapter.

(4) In addition to the application requirements outlined under subsection (3), the applicant for a Class “C," Class “E," Class “M," Class “MA," Class “MB," or Class “MR" license must include a statement on a form provided by the department of the experience that he or she believes will qualify him or her for such license.

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class “G” license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a Class “K” licensee; however, no more than 8 hours of such training shall consist of range training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant submits a valid firearm certificate among those specified in paragraph (6)(a).

(6) In addition to the requirements under subsection (3), an applicant for a Class “K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant’s Class “K” application.

3. A valid Firearms Instructor Certificate issued by a federal law enforcement agencyissued not more than 8 years before the submission of the applicant’s Class “K” application.

(b) Pay the fee for and pass an examination administered by the department which shall be based upon, but is not necessarily limited to, a firearms instruction manual provided by the department.

(7) In addition to the application requirements for individuals, partners, or officers outlined under subsection (3), the application for an agency license must contain the following information:

(a) The proposed name under which the agency intends to operate.

(b) The street address, mailing address, and telephone numbers of the principal location at which business is to be conducted in this state.

(c) The street address, mailing address, and telephone numbers of all branch offices within this state.

(d) The names and titles of all partners or, in the case of a corporation, the names and titles of its principal officers.

(8) Upon submission of a complete application, a Class “CC," Class “C," Class “D," Class “EE," Class “E," Class “M," Class “MA," Class “MB," or Class “MR" applicant may commence employment or appropriate duties for a licensed agency or branch office. However, the Class “C" or Class “E" applicant must work under the direction and control of a sponsoring licensee while his or her application is being processed. If the department denies application for licensure, the employment of the applicant must be terminated immediately, unless he or she performs only unregulated duties.

## 493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(a) Be at least 18 years of age.

(b) Be of good moral character.

(c) Not have been adjudicated incapacitated under ss. 744.331 or a similar statute in another state, unless her or his capacity has been judicially restored; not have been involuntarily placed in a treatment facility for the mentally ill under chapter 394 or a similar statute in any other state, unless her or his competency has been judicially restored; and not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.

(d) Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired; not have been committed under chapter 397, former chapter 396, or a similar law in any other state; not have been found to be a habitual offender under ss. 856.011(3) or a similar law in any other state; and not have had two or more convictions under ss. 316.193 or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.

(e) Not have been committed for controlled substance abuse or have been found guilty of a crime under chapter 893 or a similar law relating to controlled substances in any other state within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

(f) Be a citizen or permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

1. An applicant for a Class “C,” Class “CC,” Class”D,” Class “DI,” Class “E,” Class “EE,” Class “M,” Class “MA,” Class “MB,” Class “MR,” or Class “RI” license who is not a United States citizen must submit proof of current employment authorization issued by the United States Citizenship and Immigration Services or proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services.

2. An applicant for a Class “G” or Class “K” license who is not a United States citizen must submit proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services.

3. An applicant for an agency or school license who is not a United States citizen or permanent legal resident alien must submit documentation issued by the United States Citizenship and Immigration Services stating that she or he is lawfully in the United States and is authorized to own and operate the type of agency or school for which she or he is applying. An employment authorization card issued by the United States Citizenship and Immigration Services is not sufficient documentation.

(g) Not be prohibited from purchasing or possessing a firearm by state or federal law if the individual is applying for a Class “G” license or a Class “K” license.

(2) Each agency shall have a minimum of one physical location within this state from which the normal business of the agency is conducted, and this location shall be considered the primary office for that agency in this state.

(a) If an agency or branch office desires to change the physical location of the business, as it appears on the license, the department must be notified within 10 days after the change, and, except upon renewal, the fee prescribed in ss. 493.6107 must be submitted for each license requiring revision. Each license requiring revision must be returned with such notification.

(b) The Class “A," Class “B," or Class “R" license and any branch office or school license shall at all times be posted in a conspicuous place at the licensed physical location in this state where the business is conducted.

(c) Each Class “A," Class “B," Class “R," branch office, or school licensee shall display, in a place that is in clear and unobstructed public view, a notice on a form prescribed by the department stating that the business operating at this location is licensed and regulated by the Department of Agriculture and Consumer Services and that any questions or complaints should be directed to the department.

(d) A minimum of one properly licensed manager shall be designated for each agency and branch office location.

(3) Each Class “C," Class “CC," Class “D," Class “DI," Class “E," Class “EE," Class “G," Class “K," Class “M," Class “MA," Class “MB," Class “MR," or Class “RI" licensee shall notify the division in writing within 10 days of a change in her or his residence or mailing address.

## 493.6107 Fees.—

(1) The department shall establish by rule examination and license fees not to exceed the following:

(a) Class “M" license—manager Class “AB" agency: $75.

(b) Class “G" license—statewide firearm license: $150.

(c) Class “K" license—firearms instructor: $100.

(d) Fee for the examination for firearms instructor: $75.

(2) The department may establish by rule a fee for the replacement or revision of a license which fee shall not exceed $30.

(3) The fees set forth in this section must be paid by check or money order or, at the discretion of the department, by electronic funds transfer at the time the application is approved, except that the applicant for a Class “G" or Class “M" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable.

(4) The department may prorate license fees.

(5) Payment of any license fee provided for under this chapter authorizes the licensee to practice his or her profession anywhere in this state without obtaining any additional license, permit, registration, or identification card, any municipal or county ordinance or resolution to the contrary notwithstanding. However, an agency may be required to obtain a city and county occupational license in each city and county where the agency maintains a physical office.

(6) The initial application fee for a veteran, as defined in s. [1.01](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0001/Sections/0001.01.html), the spouse or surviving spouse of such veteran, a member of the United States Armed Forces who has served on active duty, or the spouse or surviving spouse of such member who at the time of death was serving on active duty and died within the 2 years preceding the initial application, shall be waived if he or she applies for a Class “C,” Class “CC,” Class “DI,” Class “E,” Class “EE,” Class “K,” Class “M,” Class “MA,” Class “MB,” Class “MR,” or Class “RI” license in a format prescribed by the department. The application format must include the applicant’s signature, under penalty of perjury, and supporting documentation. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans’ Affairs with his or her application in order to obtain a waiver. A licensee seeking such waiver must apply in a format prescribed by the department, including the applicant’s signature, under penalty of perjury, and supporting documentation.

## 493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(1) Except as otherwise provided, the department must investigate an applicant for a license under this chapter before it may issue the license. The investigation must include:

(a) 1. An examination of fingerprint records and police records. If a criminal history record check of an applicant under this chapter is performed by means of fingerprint identification, the time limitations prescribed by s. 120.60(1) shall be tolled while the applicant's fingerprints are under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. In addition to subsection (1), the department shall make an investigation of the general physical fitness of the Class “G" applicant to bear a weapon or firearm. Determination of physical fitness shall be certified by a physician or physician assistant currently licensed pursuant to chapter 458, chapter 459, or any similar law of another state or authorized to act as a licensed physician by a federal agency or department or by an advanced registered nurse practitioner currently licensed pursuant to chapter 464. Such certification shall be submitted on a form provided by the Federal Bureau of Investigation.

(b) An inquiry to determine if the applicant has been adjudicated incompetent under chapter 744 or has been committed to a mental institution under chapter 394.

(c) Such other investigation of the individual as the department may deem necessary.

(2) In addition to subsection (1), the department shall make an investigation of the general physical fitness of the Class “G" applicant to bear a weapon or firearm. Determination of physical fitness shall be certified by a physician or physician assistant currently licensed pursuant to chapter 458, chapter 459, or any similar law of another state or authorized to act as a licensed physician by a federal agency or department or by an advanced practice registered nurse currently licensed pursuant to chapter 464. Such certification shall be submitted on a form provided by the department.

(3) The department must also investigate the mental history and current mental and emotional fitness of any Class “G" or Class “K” applicant, and may deny a Class “G" or Class “K” license to anyone who has a history of mental illness or drug or alcohol abuse. Notwithstanding s. 790.065(2)(a)4.f., the Department of Law Enforcement is authorized, for the limited purpose of determining eligibility of Class "G" or Class "K" applicants and licensees under this chapter, to provide the department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm.

(4) Beginning January 1, 2017, the Department of Law Enforcement shall:

(a) Retain and enter into the statewide automated biometric identification system established in s. 943.05(2)(b) all fingerprints submitted to the Department of Agriculture and Consumer Services pursuant to this chapter.

(b) When the Department of Law Enforcement begins participation in the Federal Bureau of Investigation’s national retained print arrest notification program, enroll such fingerprints in the program. The fingerprints must thereafter be available for arrest notifications and all purposes and uses authorized for arrest fingerprint submissions entered into the statewide automated biometric identification system established in s. 943.05(2)(b).

(c) Search all arrest fingerprints against fingerprints retained.

(d) Report to the Department of Agriculture and Consumer Services any arrest record that it identifies or that is identified by the Federal Bureau of Investigation.

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.

## 493.6109 Reciprocity.—

(1) The department may adopt rules for:

(a) Entering into reciprocal agreements with other states or territories of the United States for the purpose of licensing persons to perform activities regulated under this chapter who are currently licensed to perform similar services in the other states or territories; or

(b) Allowing a person who is licensed in another state or territory to perform similar services in this state, on a temporary and limited basis, without the need for licensure in state.

(2) The rules authorized in subsection (1) may be promulgated only if:

(a) The other state or territory has requirements which are substantially similar to or greater than those established in this chapter.

(b) The applicant has engaged in licensed activities for at least 1 year in the other state or territory with no disciplinary action against him or her.

(c) The Commissioner of Agriculture or other appropriate authority of the other state or territory agrees to accept service of process for those licensees who are operating in this state on a temporary basis.

## 493.6110 Licensee's insurance.—

A class “B” agency license may not be issued unless the applicant first files with the department a certification of insurance evidencing commercial general liability coverage. The coverage shall provide the department as an additional insured for the purpose of receiving all notices of modification or cancellation of such insurance. Coverage shall be written by an insurance company which is lawfully engaged to provide insurance coverage in Florida. Coverage shall provide for a combined single-limit policy in the amount of at least $300,000for death, bodily injury, property damage, and personal injury. Coverage shall insure for the liability of all employees licensed by the department while acting in the course of their employment.

(1) The licensed agency shall notify the department of any claim against such insurance.

(2) The licensed agency shall notify the department immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

(3) The agency license shall be automatically suspended upon the date of cancellation unless evidence of insurance is provided to the department prior to the effective date of cancellation.

## 493.6111 License; contents; identification card.—

(1) All licenses issued pursuant to this chapter shall be on a form prescribed by the department and shall include the licensee's name, license number, expiration date of the license, and any other information the department deems necessary. Class “C," Class “CC," Class “D," Class “E," Class “EE," Class “M," Class “MA," Class “MB," Class “MR," and Class “G" licenses shall be in the possession of individual licensees while on duty.

(2) Licenses shall be valid for a period of 2 years, except for Class “A," Class “B," Class “AB," Class “K,” Class “R," and branch agency licenses, which shall be valid for a period of 3 years.

(3) The department shall, upon complete application and payment of the appropriate fees, issue a separate license to each branch office for which application is made.

(4) Notwithstanding the existence of a valid Florida corporate registration, an agency or school licensee may not conduct activities regulated under this chapter under any fictitious name without prior written authorization from the department to use that name in the conduct of activities regulated under this chapter. The department may not authorize the use of a name that is so similar to that of a public officer or agency, or of that used by another licensee, that the public may be confused or misled thereby. The authorization for the use of a fictitious name must require, as a condition precedent to the use of such name, the filing of a certificate of engaging in business under a fictitious name under ss. 865.09. A licensee may not conduct business under more than one name except as separately licensed nor shall the license be valid to protect any licensee who is engaged in the business under any name other than that specified in the license. An agency desiring to change its licensed name must notify the department and, except upon renewal, pay a fee not to exceed $30 for each license requiring revision including those of all licensed employees except Class “D" or Class “G" licensees. Upon the return of such licenses to the department, revised licenses shall be provided.

(5) It shall be the duty of every agency to furnish all of its partners, principal corporate officers, and all licensed employees an identification card. The card shall specify at least the name and license number, if appropriate, of the holder of the card and the name and license number of the agency and shall be signed by a representative of the agency and by the holder of the card.

(a) Each individual to whom a license and identification card have been issued shall be responsible for the safekeeping thereof and shall not loan, or let or allow any other individual to use or display, the license or card.

(b) The identification card shall be in the possession of each partner, principal corporate officer, or licensed employee while on duty.

(c) Upon denial, suspension, or revocation of a license, or upon termination of a business association with the licensed agency, it shall be the duty of each partner, principal corporate officer, manager, or licensed employee to return the identification card to the issuing agency.

(6) A licensed agency must include its agency license number in any advertisement in any print medium or directory, and must include its agency license number in any written bid or offer to provide services.

## 493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or employees.—

(1) After filing the application, unless the department declines to issue the license or revokes it after issuance, an agency shall, within 5 working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the department complete applications for such individuals. The agency's good standing under this chapter shall be contingent upon the department's approval of any new partner or officer.

(2) Each agency shall, upon the employment or termination of employment of a licensee, report such employment or termination immediately to the department and, in the case of a termination within 15 calendar days, report the reason or reasons therefor. The report shall be submitted electronically in a manner prescribed by the department.

## 493.6113 Renewal application for licensure.—

(1) A license granted under the provisions of this chapter shall be renewed biennially by the department, except for Class “A,” Class “B,” Class “AB,” Class “K,” Class “R,” and branch agency licenses, which shall be renewed every 3 years.

(2) At least 90 days before the expiration date of the license, the department shall mail a written notice to the last known mailing address of the licensee.

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation’s national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(a) Each Class “B” licensee shall additionally submit on a form prescribed by the department a certification of insurance that evidences that the licensee maintains coverage as required under s. 493.6110.

(b) Each Class “G” licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms requalification training taught by a Class “K” licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training shall be submitted to the department upon completion of the training. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

(c) Each Class “DS” or Class “RS” licensee shall additionally submit the current curriculum, examination, and list of instructors.

(d) Each Class “K” licensee shall additionally submit one of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and by paying a late fee equal to the amount of the license fee.

(5) No license shall be renewed 3 months or more after its expiration date. The applicant shall submit a new, complete application and the respective fees.

(6) A renewal applicant shall not perform any activity regulated by this chapter between the date of expiration and the date of renewal of his or her license.

(7) The department shall waive the respective fees for a licensee who: (a) Is an active duty member of the United States Armed Forces or the spouse of such member; (b) Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the license. A licensee who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the application must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or (c) Is the surviving spouse of a member of the United States Armed Forces who was serving on active duty at the time of death and died within the 2 years preceding the expiration date of the license. A licensee seeking such waiver must apply in a format prescribed by the department, including the applicant’s signature, under penalty of perjury, and supporting documentation.

## 493.6114 Cancellation or inactivation of license.—

(1) In the event the licensee desires to cancel her or his license, she or he shall notify the department in writing and return the license to the department within 10 days of the date of cancellation.

(2) The department, at the written request of the licensee, may place her or his license in inactive status. A license may remain inactive for a period of 3 years, at the end of which time, if the license has not been renewed, it shall be automatically canceled. If the license expires during the inactive period, the licensee shall be required to pay license fees and, if applicable, show proof of insurance or proof of firearms training before the license can be made active. No late fees shall apply when a license is in inactive status.

## 493.6115 Weapons and firearms.—

(1) The provisions of this section shall apply to all licensees in addition to the other provisions of this chapter.

(2) Only Class “C," Class “CC," Class “D," Class “M," Class “MA," or Class “MB" licensees are permitted to bear a firearm and any such licensee who bears a firearm shall also have a Class “G" license.

(3) No employee shall carry or be furnished a weapon or firearm unless the carrying of a weapon or firearm is required by her or his duties, nor shall an employee carry a weapon or firearm except in connection with those duties. When carried pursuant to this subsection, the weapon or firearm shall be encased in view at all times except as provided in subsection (4).

(4) A Class “C" or Class “CC" licensee who is 21 years of age or older and has also been issued a Class “G" license may carry, in the performance of her or his duties, a concealed firearm. A Class “D" licensee who is 21 years of age or older who has also been issued a Class “G" license may carry a concealed firearm in the performance of her or his duties under the conditions specified in ss. 493.6305(3) and (4). The Class “G" license must clearly indicate such authority. The authority of any such licensee to carry a concealed firearm is valid in any location throughout the state while performing services within the scope of the license.

(5) The Class “G" license shall remain in effect only during the period the applicant is employed as a Class “C," Class “CC," Class “D," Class “MA," Class “MB," or Class “M" licensee.

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class “G" license may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only; or a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. A licensee may not carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training referenced in subsection (8) or ss. 493.6113(3)(b).

(7) Any person who provides classroom and range instruction to applicants for Class “G" licensure shall have a Class “K" license.

(8) A Class “G" applicant must satisfy the minimum training criteria as set forth in ss. 493.6105(5) and as established by rule of the department.

(9) Whenever a Class “G" licensee discharges her or his firearm in the course of her or his duties, the Class “G" licensee and the agency by which she or he is employed shall, within 5 working days, submit to the department an explanation describing the nature of the incident, the necessity for using the firearm, and a copy of any report prepared by a law enforcement agency. The department may revoke or suspend the Class “G" licensee's license and the licensed agency's agency license if this requirement is not met.

(10) The department may promulgate rules to establish minimum standards to issue licenses for weapons other than firearms.

(11) The department may establish rules to require periodic classroom training for firearms instructors to provide updated information relative to curriculum or other training requirements provided by statute or rule.

(12) The department may issue a temporary Class “G" license, on a case-by-case basis, if:

(a) The agency or employer has certified that the applicant has been determined to be mentally and emotionally stable by either:

1. A validated written psychological test taken within the previous 12-month period.

2. An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period.

3. Presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service.

(b) The department has reviewed the mental health and substance abuse data provided by the Department of Law Enforcement as authorized in s. 493.6108(3) and has determined the applicant is not prohibited from licensure based upon this data.

(c) The applicant has submitted a complete application for a Class “G" license, with a notation that she or he is seeking a temporary Class “G" license.

(d) The applicant has completed all Class “G" minimum training requirements as specified in this section.

(e) The applicant has received approval from the department subsequent to its conduct of a criminal history record check as authorized in ss. 493.6108(1)

(13) In addition to other fees, the department may charge a fee, not to exceed $25, for processing a Class “G" license application as a temporary Class “G" license request.

(14) Upon issuance of the temporary Class “G" license, the licensee is subject to all of the requirements imposed upon Class “G" licensees.

(15) The temporary Class “G" license is valid until the Class “G" license is issued or denied. If the department denies the Class “G" license, any temporary Class “G" license issued to that individual is void, and the individual shall be removed from armed duties immediately.

(16) If the criminal history record check program referenced in ss. 493.6108(1) is inoperable, the department may issue a temporary “G" license on a case-by-case basis, provided that the applicant has met all statutory requirements for the issuance of a temporary “G" license as specified in subsection (12), excepting the criminal history record check stipulated there; provided, that the department requires that the licensed employer of the applicant conduct a criminal history record check of the applicant pursuant to standards set forth in rule by the department, and provide to the department an affidavit containing such information and statements as required by the department, including a statement that the criminal history record check did not indicate the existence of any criminal history that would prohibit licensure. Failure to properly conduct such a check, or knowingly providing incorrect or misleading information or statements in the affidavit constitutes grounds for disciplinary action against the licensed agency, including revocation of license.

(17) No person is exempt from the requirements of this section by virtue of holding a concealed weapon or concealed firearm license issued pursuant to ss. 790.06.

## 493.6116 Sponsorship of interns.—

(1) Only licensees may sponsor interns. A Class “C," Class “M," or Class “MA" licensee may sponsor a Class “CC" private investigator intern; a Class “E" or Class “MR" licensee may sponsor a Class “EE" recovery agent intern.

(2) An internship may not commence until the sponsor has submitted to the department the notice of intent to sponsor. Such notice shall be on a form provided by the department.

(3) Internship is intended to serve as a learning process. Sponsors shall assume a training status by providing direction and control of interns. Sponsors shall not allow interns to operate independently of such direction and control or require interns to perform activities that do not enhance the intern's qualification for licensure. Interns must perform regulated duties within the boundaries of this state during the period of internship.

(4) No sponsor may sponsor more than six interns at the same time.

(5) A sponsor shall certify a biannual progress report on each intern and shall certify completion or termination of an internship to the department within 15 days after such completion or termination. The report must be made on a form provided by the department and must include at a minimum:

(a) The inclusive dates of the internship.

(b) A narrative part explaining the primary duties, types of experiences gained, and the scope of training received.

(c) An evaluation of the performance of the intern and a recommendation regarding future licensure.

## 493.6117 Division of Licensing Trust Fund.—

There is created within the Division of Licensing of the department a Division of Licensing Trust Fund. All moneys required to be paid under this chapter shall be collected by the department and deposited in the trust fund. The Division of Licensing Trust Fund shall be subject to the service charge imposed pursuant to chapter 215. The Legislature shall appropriate from the fund such amounts as it deems necessary for the purpose of administering the provisions of this chapter. The unencumbered balance in the trust fund at the beginning of the year shall not exceed $100,000, and any excess shall be transferred to the General Revenue Fund unallocated.

## 493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection(2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter:

(a) Fraud or willful misrepresentation in applying for or obtaining a license.

(b) Use of any fictitious or assumed name by an agency unless the agency has department approval and qualifies under ss. 865.09.

(c) Being found guilty of or entering a plea of guilty or nolo contendere to, regardless of adjudication, or being convicted of a crime that directly relates to the business for which the license is held or sought. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges, and the department shall allow the individual being disciplined or denied an application for a license to present any mitigating circumstances surrounding his or her plea.

(d) A false statement by the licensee that any individual is or has been in his or her employ.

(e) A finding that the licensee or any employee is guilty of willful betrayal of a professional secret or any unauthorized release of information acquired as a result of activities regulated under this chapter.

(f) Proof that the applicant or licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of the activities regulated under this chapter.

(g) Conducting activities regulated under this chapter without a license or with a revoked or suspended license.

(h) Failure of the licensee to maintain in full force and effect the commercial general liability insurance coverage required by ss. 493.6110.

(i) Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer or an employee of the state, the United States, or any political subdivision thereof by identifying himself or herself as a federal, state, county, or municipal law enforcement officer or official representative, by wearing a uniform or presenting or displaying a badge or credentials that would cause a reasonable person to believe that he or she is a law enforcement officer or that he or she has official authority, by displaying any flashing or warning vehicular lights other than amber colored, or by committing any act that is intended to falsely convey official status.

(j) Commission of an act of violence or the use of force on any person except in the lawful protection of one's self or another from physical harm.

(k) Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under this chapter.

(l) Soliciting business for an attorney in return for compensation.

(m) Transferring or attempting to transfer a license issued pursuant to this chapter.

(n) Employing or contracting with any unlicensed or improperly licensed person or agency to conduct activities regulated under this chapter, or performing any act that assists, aids, or abets a person or business entity in engaging in unlicensed activity, when the licensure status was known or could have been ascertained by reasonable inquiry.

(o) Failure or refusal to cooperate with or refusal of access to an authorized representative of the department engaged in an official investigation pursuant to this chapter.

(p) Failure of any partner, principal corporate officer, or licensee to have his or her identification card in his or her possession while on duty.

(q) Failure of any licensee to have his or her license in his or her possession while on duty, as specified in ss. 493.6111(1).

(r) Failure or refusal by a sponsor to certify a biannual written report on an intern or to certify completion or termination of an internship to the department within 15 working days.

(s) Failure to report to the department any person whom the licensee knows to be in violation of this chapter or the rules of the department.

(t) Violating any provision of this chapter.

(u) For a Class “G” licensee, failing to timely complete requalification training as required in s. 493.6113(3)(b).

(v) For a Class “K” licensee, failing to maintain active certification specified under s. 493.6105(6).

In addition to the grounds for disciplinary action prescribed in paragraphs (a)-(t), Class “R" recovery agencies, Class “E" recovery agents, and Class “EE" recovery agent interns are prohibited from committing the following acts:

(w) For a Class “G” or a Class “K” applicant or licensee, being prohibited from purchasing or possessing a firearm by state or federal law.

(x) In addition to the grounds for disciplinary action prescribed in paragraphs (a)-(t), Class “R” recovery agencies, Class “E” recovery agents, and Class “EE” recovery agent interns are prohibited from committing the following acts:

1. Recovering a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment that has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner or mortgagee.

2. Charging for expenses not actually incurred in connection with the recovery, transportation, storage, or disposal of repossessed property or personal property obtained in repossession.

3. Using any repossessed property, or personal property obtained in a repossession, for the personal benefit of a licensee or an officer, director, partner, manager, or employee of a licensee.

4. Selling property recovered under the provisions of this chapter, except with written authorization from the legal owner or the mortgagee thereof.

5. Failing to notify the police or sheriff's department of the jurisdiction in which the repossessed property is recovered within 2 hours after recovery.

6. Failing to remit moneys, collected in lieu of recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment to the client within 10 working days.

7. Failing to deliver to the client a negotiable instrument that is payable to the client, within 10 working days after receipt of such instrument.

8. Falsifying, altering, or failing to maintain any required inventory or records regarding disposal of personal property contained in or on repossessed property pursuant to ss. 493.6404(1).

9. Carrying any weapon or firearm when he or she is on private property and performing duties under his or her license whether or not he or she is licensed pursuant to ss. 790.06.

10. Soliciting from the legal owner the recovery of property subject to repossession after such property has been seen or located on public or private property if the amount charged or requested for such recovery is more than the amount normally charged for such a recovery.

11. Wearing, presenting, or displaying a badge in the course of performing a repossession regulated by this chapter.

(y) Installation of a tracking device or tracking application in violation of s. [934.425](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0934/Sections/0934.425.html).

(2) When the department finds any violation of subsection (1), it may do one or more of the following:

(a) Deny an application for the issuance or renewal of a license.

(b) Issue a reprimand.

(c) Impose an administrative fine in the Class I category pursuant to s.570.97 for every count or separate offense

(d) Place the licensee on probation for a period of time and subject to such conditions as the department may specify.

(e) Suspend or revoke a license.

(3) The department may deny an application for licensure citing lack of good moral character only if the finding by the department of lack of good moral character is supported by clear and convincing evidence. In such cases, the department shall furnish the applicant a statement containing the findings of the department, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to an administrative hearing and subsequent appeal.

(4) Notwithstanding the provisions of paragraph (1)(c) and subsection (2):

(a) If the applicant or licensee has been convicted of a felony, the department shall deny the application or revoke the license unless and until civil rights have been restored by the State of Florida or by a state acceptable to Florida and a period of 10 years has expired since final release from supervision.

(b) A Class “G" applicant who has been convicted of a felony shall also have had the specific right to possess, carry, or use a firearm restored by the State of Florida.

(c) If the applicant or licensee has been found guilty of, entered a plea of guilty to, or entered a plea of nolo contendere to a felony and adjudication of guilt is withheld, the department shall deny the application or revoke the license until a period of 3 years has expired since final release from supervision.

(d) A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges, and the department shall allow the person being disciplined or denied an application for a license to present any mitigating circumstances surrounding his or her plea.

(e) The grounds for discipline or denial cited in this subsection shall be applied to any disqualifying criminal history regardless of the date of commission of the underlying criminal charge. Such provisions shall be applied retroactively and prospectively.

(5) Upon revocation or suspension of a license, the licensee shall forthwith return the license which was suspended or revoked.

(6) The agency or Class “DS” or “RS” license and the approval or license of each officer, partner, or owner of the agency, school, or training facility are automatically suspended upon entry of a final order imposing an administrative fine against the agency, school, or training facility, until the fine is paid, if 30 calendar days have elapsed since the entry of the final order. All owners and corporate or agency officers or partners are jointly and severally liable for fines levied against the agency, school, or training facility. The agency or Class “DS” or “RS” license or the approval or license of any officer, partner, or owner of the agency, school, or training facility may not be renewed, and an application may not be approved, if the owner, licensee, or applicant is liable for an outstanding administrative fine imposed under this chapter. An individual’s approval or license becomes automatically suspended if a fine imposed against the individual or his or her agency is not paid within 30 days after the date of the final order, and remains suspended until the fine is paid. Notwithstanding the provisions of this subsection, an individual’s approval or license may not be suspended and an application may not be denied if the licensee or the applicant has an appeal from a final order pending in any appellate court.

(7) An applicant or licensee shall be ineligible to reapply for the same class of license for a period of 1 year following final agency action resulting in the denial or revocation of a license applied for or issued under this chapter. This time restriction shall not apply to administrative denials wherein the basis for denial was:

(a) An inadvertent error or omission on the application;

(b) The experience documented by the department was insufficient at the time of application;

(c) The department was unable to complete the criminal background investigation due to insufficient information from the Department of Law Enforcement, the Federal Bureau of Investigation, or any other applicable law enforcement agency; or

(d) Failure to submit required fees.

## 493.6119 Divulging investigative information; false reports prohibited.—

(1) Except as otherwise provided by this chapter or other law, no licensee, or any employee of a licensee or licensed agency shall divulge or release to anyone other than her or his client or employer the contents of an investigative file acquired in the course of licensed investigative activity. However, the prohibition of this section shall not apply when the client for whom the information was acquired, or the client's lawful representative, has alleged a violation of this chapter by the licensee, licensed agency, or any employee, or when the prior written consent of the client to divulge or release such information has been obtained.

(2) Nothing in this section shall be construed to deny access to any business or operational records, except as specified in subsection (1), by an authorized representative of the department engaged in an official investigation, inspection, or inquiry pursuant to the regulatory duty and investigative authority of this chapter.

(3) Any licensee or employee of a licensee or licensed agency who, in reliance on subsection (1), denies access to an investigative file to an authorized representative of the department shall state such denial in writing within 2 working days of the request for access. Such statement of denial shall include the following:

(a) That the information requested was obtained by a licensed private investigator on behalf of a client; and

(b) That the client has been advised of the request and has denied permission to grant access; or

(c) That the present whereabouts of the client is unknown or attempts to contact the client have been unsuccessful but, in the opinion of the person denying access, review of the investigative file under conditions specified by the department would be contrary to the interests of the client; or

(d) That the requested investigative file will be provided pursuant to a subpoena issued by the department.

(4) No licensee or any employer or employee of a licensee or licensed agency shall willfully make a false statement or report to her or his client or employer or an authorized representative of the department concerning information acquired in the course of activities regulated by this chapter.

## 493.6120 Violations; penalty.—

(1) (a) Except as provided in paragraph (b), a person who engages in any activity for which this chapter requires a license and who does not hold the required license commits:

1. For a first violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. For a second or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and the department may seek the imposition of a civil penalty not to exceed $10,000.

(b) Paragraph (a) does not apply if the person engages in unlicensed activity within 90 days after the date of the expiration of his or her license.

(2) (a) A person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under this chapter, knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) during the course of committing a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who violates paragraph (a) during the course of committing a felony resulting in death or serious bodily injury to another human being commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Except as otherwise provided in this chapter, a person who violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or ss. 775.083. The department may also seek the imposition of a civil penalty in the Class II category pursuant to s. 570.971 upon a withhold of adjudication of guilt or an adjudication of guilt in a criminal case.

(4) Aperson who is convicted of a violation of this chapter shall not be eligible for licensure for a period of 5 years.

(5) A person who violates or disregards a cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or ss. 775.083. In addition, the department may seek the imposition of a civil penalty in the Class II category pursuant to s.570.971.

(6) A person who was an owner, officer, partner, or manager of a licensed agency or a Class “DS” or “RS” school or training facility at the time of any activity that is the basis for revocation of the agency or branch office license or the school or training facility license and who knew or should have known of the activity, shall have his or her personal licenses or approval suspended for 3 years and may not have any financial interest in or be employed in any capacity by a licensed agency or a school or training facility during the period of suspension.

(7) A person may not knowingly possess, issue, cause to be issued, sell, submit, or offer a fraudulent training certificate, proficiency form, or other official document that declares an applicant to have successfully completed any course of training required for licensure under this chapter when that person either knew or reasonably should have known that the certificate, form, or document was fraudulent. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## 493.6121 Enforcement; investigation.—

(1) The department shall have the power to enforce the provisions of this chapter, irrespective of the place or location in which the violation occurred, and, upon the complaint of any person or on its own initiative, to cause to be investigated any suspected violation thereof or to cause to be investigated the business and business methods of any licensed or unlicensed person, agency or employee thereof, or applicant for licensure under this chapter.

(2) In any investigation undertaken by the department, each licensed or unlicensed person, applicant, agency, or employee shall, upon request of the department provide records and shall truthfully respond to questions concerning activities regulated under this chapter. Such records shall be maintained in this state for a period of 2 years at the principal place of business of the licensee, or at any other location within the state for a person whose license has been terminated, canceled, or revoked. Upon request by the department the records must be made available immediately to the department unless the department determines that an extension may be granted.

(3) The department shall have the authority to investigate any licensed or unlicensed person, firm, company, partnership, or corporation when such person, firm, company, partnership, or corporation is advertising as providing or is engaged in performing services which require licensure under this chapter or when a licensee is engaged in activities which do not comply with or are prohibited by this chapter; and the department shall have the authority to issue an order to cease and desist the further conduct of such activities, or seek an injunction, or take other appropriate action pursuant to ss. 493.6118(2)(a) or (c).

(4) In the exercise of its enforcement responsibility and in the conduct of any investigation authorized by this chapter, the department shall have the power to subpoena and bring before it any person in the state, require the production of any papers it deems necessary, administer oaths, and take depositions of any persons so subpoenaed. If any person fails or refuses to comply with a proper subpoena to be examined or fails or refuses to answer any question about her or his qualifications or the business methods or business practices under investigation or refuses access to agency records in accordance with ss. 493.6119, the circuit court of Leon County or of the county wherein such person resides may issue an order on the application of the department requiring such person to comply with the subpoena and to testify. Such failure or refusal shall also be grounds for revocation, suspension, or other disciplinary action. The testimony of witnesses in any such proceeding shall be under oath before the department or its agents.

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of Agriculture and Consumer Services may obtain access to the information in criminal justice information systems and to criminal justice information as defined in ss. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and protect the confidentiality of the information. Such criminal justice information submitted to the division is confidential and exempt from the provisions of ss. 119.07(1).

(6) The Department may institute judicial proceedings in the appropriate circuit court seeking enforcement of this chapter, or any rule or order of the department.

(7) Any investigation conducted by the department pursuant to this chapter is exempt from ss. 119.07(1) until:

(a) The investigation of the complaint has been concluded and determination has been made by the department as to whether probable cause exists;

(b) The case is closed prior to a determination by the department as to whether probable cause exists; or

(c) The subject of the investigation waives her or his privilege of confidentiality.

## 493.6122 Information about licensees; confidentiality.—

The residence telephone number and residence address of any Class “C," Class “CC," Class “E," or Class “EE" licensee maintained by the department is confidential and exempt from the provisions of ss. 119.07(1), except that the department may provide this information to local, state, or federal law enforcement agencies. When the residence telephone number or residence address of such licensee is, or appears to be, the business telephone number or business address, this information shall be public record.

## 493.6123 Publication to industry.—

(1) The department shall have the authority to periodically, through the publication of a newsletter, advise its licensees of information that the department or the advisory council determines is of interest to the industry. Additionally, this newsletter shall contain the name and locality of any licensed or unlicensed person or agency against which the department has filed a final order relative to an administrative complaint and shall contain the final disposition. This newsletter shall be published not less than two or more than four times annually.

(2) The department shall develop and make available to each Class “C," Class “D," and Class “E" licensee and all interns a pamphlet detailing in plain language the legal authority, rights, and obligations of his or her class of licensure. Within the pamphlet, the department should endeavor to present situations that the licensee may be expected to commonly encounter in the course of doing business pursuant to his or her specific license, and provide to the licensee information on his or her legal options, authority, limits to authority, and obligations. The department shall supplement this with citations to statutes and legal decisions, as well as a selected bibliography that would direct the licensee to materials the study of which would enhance his or her professionalism. The department shall provide a single copy of the appropriate pamphlet without charge to each individual to whom a license is issued, but may charge for additional copies to recover its publication costs. The pamphlet shall be updated every 2 years as necessary to reflect rule or statutory changes, or court decisions. Intervening changes to the regulatory situation shall be noticed in the industry newsletter issued pursuant to subsection (1).

## 493.6124 Use of state seal; prohibited.—

No person or licensee shall use any facsimile reproduction or pictorial portion of the Great Seal of the State of Florida on any badge, credentials, identification card, or other means of identification used in connection with any activities regulated under this chapter.

## 493.6125 Maintenance of information concerning administrative complaints and disciplinary actions.—

The department shall maintain statistics and relevant information, by profession, for private investigators, recovery agents, and private security officers which details:

(1) The number of complaints received and investigated.

(2) The number of complaints initiated and investigated by the department.

(3) The disposition of each complaint.

(4) The number of administrative complaints filed by the department.

(5) The disposition of all administrative complaints.

(6) A description of all disciplinary actions taken by profession.

## 493.6126 Saving clauses.—

(1) No judicial or administrative proceeding pending on October 1, 1990, shall be abated as a result of the repeal and reenactment of this chapter.

(2) All licenses valid on October 1, 1990, shall remain in full force and effect until expiration or revocation by the department. Henceforth, all licenses shall be applied for and renewed in accordance with this chapter.

# PART II PRIVATE INVESTIGATIVE SERVICES

## 493.6201 Classes of licenses.—

(1) Any person, firm, company, partnership, or corporation which engages in business as a private investigative agency shall have a Class “A" license. A Class “A" license is valid for only one location.

(2) Each branch office of a Class “A" agency shall have a Class “AA" license. Where a person, firm, company, partnership, or corporation holds both a Class “A" and Class “B" license, each additional or branch office shall have a Class “AB" license.

(3) Any individual who performs the services of a manager for a:

(a) Class “A" private investigative agency or Class “AA" branch office shall have a Class “MA" license. A Class “C" or Class “M" licensee may be designated as the manager, in which case the Class “MA" license is not required.

(b) Class “A" and “B" agency or a Class “AB" branch office shall have a Class “M" license.

(4) Class “C" or Class “CC" licensees shall own or be an employee of a Class “A" agency, a Class “A" and Class “B" agency, or a branch office. This does not include those who are exempt under ss. 493.6102, but who possess a Class “C" license solely for the purpose of holding a Class “G" license.

(5) Any individual who performs the services of a private investigator shall have a Class “C" license.

(6) Any individual who performs private investigative work as an intern under the direction and control of a designated, sponsoring Class “C" licensee or a designated, sponsoring Class “MA" or Class “M" licensee must have a Class “CC" license.

(7) Only Class “M," Class “MA," Class “C," or Class “CC" licensees are permitted to bear a firearm, and any such licensee who bears a firearm shall also have a Class “G" license.

(8) A Class “C" or Class “CC" licensee may perform bodyguard services without obtaining a Class “D" license.

## 493.6202 Fees.—

(1) The department shall establish by rule examination and license fees, not to exceed the following:

(a) Class “A" license—private investigative agency: $450.

(b) Class “AA" or “AB" license—branch office: $125.

(c) Class “MA" license—private investigative agency manager: $75.

(d) Class “C" license—private investigator: $75.

(e) Class “CC" license—private investigator intern: $60.

(2) The department may establish by rule a fee for the replacement or revision of a license, which fee shall not exceed $30.

(3) The fees set forth in this section must be paid by check or money order or, at the discretion of the department, by electronic funds transfer at the time the application is approved, except that the applicant for a Class “G," Class “C," Class “CC," Class “M," or Class “MA" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable.

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class “C,” Class “CC,” or Class “MA” license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans’ Affairs with his or her application in order to obtain a waiver.

## 493.6203 License requirements.—

In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(1) Each agency or branch office shall designate a minimum of one appropriately licensed individual to act as manager, directing the activities of the Class “C" or Class “CC" employees.

(2) An applicant for a Class “MA" license must have 2 years of lawfully gained, verifiable, full-time experience, or training in:

(a) Private investigative work or related fields of work that provided equivalent experience or training;

(b) Work as a Class “CC" licensed intern;

(c) Any combination of paragraphs (a) and (b);

(d) Experience described in paragraph (a) for 1 year and experience described in paragraph (e) for 1 year;

(e) No more than 1 year using:

1. College coursework related to criminal justice, criminology, or law enforcement administration; or

2. Successfully completed law enforcement-related training received from any federal, state, county, or municipal agency; or

(f) Experience described in paragraph (a) for 1 year and work in a managerial or supervisory capacity for 1 year.

(3) An applicant for a Class “M" license shall qualify for licensure as a Class “MA" manager as outlined under subsection (2) and as a Class “MB" manager as outlined under ss. 493.6303(2). However, experience in performing bodyguard services is not creditable toward the requirements of this subsection.

(4) An applicant for a Class “C" license shall have 2 years of lawfully gained, verifiable, full-time experience, or training in one, or a combination of more than one, of the following:

(a) Private investigative work or related fields of work that provided equivalent experience or training.

(b) College coursework related to criminal justice, criminology, or law enforcement administration, or successful completion of any law enforcement-related training received from any federal, state, county, or municipal agency, except that no more than 1 year may be used from this category.

(c) Work as a Class “CC" licensed intern. However, experience in performing bodyguard services is not creditable toward the requirements of this subsection.

(5) An applicant for a Class “MA,” Class “M,” or Class “C” license must pass an examination that covers the provisions of this chapter and is administered by the department or by a provider approved by the department. The applicant must pass the examination before applying for licensure and must submit proof with the license application on a form approved by rule of the department that he or she has passed the examination. The administrator of the examination shall verify the identity of each applicant taking the examination.

(a) The examination requirement in this subsection does not apply to an individual who holds a valid Class “CC,” Class “C,” Class “MA,” or Class “M” license.

(b) Notwithstanding the exemption provided in paragraph (a), if the license of an applicant for relicensure has been invalid for more than 1 year, the applicant must take and pass the examination.

(c) The department shall establish by rule the content of the examination, the manner and procedure of its administration, and an examination fee that may not exceed $100.

(6) (a) A Class “CC” licensee must serve an internship under the direction and control of a designated sponsor, who is a Class “C,” Class “MA,” or Class “M” licensee.

(b) Before submission of an application to the department, the applicant for a Class “CC” license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination. The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted with the application for a Class “CC” license. The training specified in this paragraph may be provided by face-to-face presentation, on-line technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant’s successful completion of each part of the approved training and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the applicant. The certificates must be on a form established by rule of the department.

2. The department shall establish by rule the general content of the professional training and the examination criteria.

3. If the license of an applicant for relicensure is invalid for more than 1 year, the applicant must complete the required training and pass any required examination.

(c) An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect a the time he or she was licensed applies.

(7) In addition to any other requirement, an applicant for a Class “G" license shall satisfy the firearms training set forth in ss. 493.6115.

# PART III PRIVATE SECURITY SERVICES

## 493.6301 Classes of licenses.—

(1) Any person, firm, company, partnership, or corporation which engages in business as a security agency shall have a Class “B" license. A Class “B" license is valid for only one location.

(2) Each branch office of a Class “B" agency shall have a Class “BB" license. Where a person, firm, company, partnership, or corporation holds both a Class “A" and Class “B" license, each branch office shall have a Class “AB" license.

(3) Any individual who performs the services of a manager for a:

(a) Class “B" security agency or Class “BB" branch office shall have a Class “MB" license. A Class “M" licensee, or a Class “D" licensee who has been so licensed for a minimum of 2 years, may be designated as the manager, in which case the Class “MB" license is not required.

(b) Class “A" and Class “B" agency or a Class “AB" branch office shall have a Class “M" license.

(4) A Class “D" licensee shall own or be an employee of a Class “B" security agency or branch office. This does not include those individuals who are exempt under ss. 493.6102(4) but who possess a Class “D" license solely for the purpose of holding a Class “G" license.

(5) Any individual who performs the services of a security officer shall have a Class “D" license. However, a Class “C" licensee or a Class “CC" licensee may perform bodyguard services without a Class “D" license.

(6) Only Class “M," Class “MB," or Class “D" licensees are permitted to bear a firearm, and any such licensee who bears a firearm shall also have a Class “G" license.

(7) Any person who operates a security officer school or training facility must have a Class “DS" license.

(8) Any individual who teaches or instructs at a Class “DS" security officer school or training facility must have a Class “DI" license.

## 493.6302 Fees.—

(1) The department shall establish by rule license fees, not to exceed the following:

(a) Class “B" license—security agency: $450.

(b) Class “BB" or Class “AB" license—branch office: $125.

(c) Class “MB" license—security agency manager: $75.

(d) Class “D" license—security officer: $45.

(e) Class “DS" license—security officer school or training facility: $60.

(f) Class “DI" license—security officer school or training facility instructor: $60.

(2) The department may establish by rule a fee for the replacement or revision of a license, which fee shall not exceed $30.

(3) The fees set forth in this section must be paid by check or money order or, at the discretion of the department, by electronic funds transfer at the time the application is approved, except that the applicant for a Class “D," Class “G," Class “M," or Class “MB" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable.

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class “D,” Class “DI,” or Class “MB” license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans’ Affairs with his or her application in order to obtain a waiver.

## 493.6303 License requirements.—

In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(1) Each agency or branch office shall designate a minimum of one appropriately licensed individual to act as manager, directing the activities of the Class “D" employees.

(2) An applicant for a Class “MB" license shall have 2 years of lawfully gained, verifiable, full-time experience, or training in:

(a) Security work or related fields of work that provided equivalent experience or training;

(b) Experience described in paragraph (a) for 1 year and experience described in paragraph (c) for 1 year;

(c) No more than 1 year using:

1. Either college coursework related to criminal justice, criminology, or law enforcement administration; or

2. Successfully completed law enforcement-related training received from any federal, state, county, or municipal agency; or

(d) Experience described in paragraph (a) for 1 year and work in a managerial or supervisory capacity for 1 year.

(3) An applicant for a Class “M" license shall qualify for licensure as a Class “MA" manager as outlined under ss. 493.6203(2) and as a Class “MB" manager as outlined under subsection (2).

(4) (a) An applicant for a Class “D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught.

(b) Upon recpplication for a license, an individual whose license has been expired for 1 year or more is considered an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued.

(5) An applicant for a Class “G" license shall satisfy the firearms training outlined in ss. 493.6115.

## 493.6304 Security officer school or training facility.—

(1) Any school, training facility, or instructor who offers the training specified in ss. 493.6303(4) for Class “D" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application accompanied by an application fee in an amount to be determined by rule, not to exceed $60. The fee shall not be refundable.

(2) The application shall be signed and verified by the applicant under oath as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

(3) The department shall adopt rules establishing the criteria for approval of schools, training facilities, and instructors.

## 493.6305 Uniforms, required wear; exceptions.—

(1) Class “D" licensees shall perform duties regulated under this chapter in a uniform which bears at least one patch or emblem visible at all times clearly identifying the employing agency. Upon resignation or termination of employment, a Class “D" licensee shall immediately return to the employer any uniform and any other equipment issued to her or him by the employer.

(2) Class “D" licensees may perform duties regulated under this chapter in nonuniform status on a limited special assignment basis, and only when duty circumstances or special requirements of the client necessitate such dress.

(3) Class “D" licensees who are also Class “G" licensees and who are performing limited, special assignment duties may carry their authorized firearm concealed in the conduct of such duties.

(4) Class “D” licensees who are also Class “G” licensees and who are performing bodyguard or executive protection services may carry their authorized firearm concealed while in nonuniform as needed in the conduct of such services.

493.631 Temporary detention by a licensed security officer or licensed security agency manager at critical infrastructure facilities.—

(1) As used in this section, the term “critical infrastructure facility” means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

(a) A chemical manufacturing facility.

(b) A refinery.

(c) An electrical power plant as defined in s. 403.031, including a substation, switching station, electrical control center, or electric transmission or distribution facility.

(d) A water intake structure, water treatment facility, wastewater treatment plant, or pump station.

(e) A natural gas transmission compressor station.

(f) A liquid natural gas terminal or storage facility.

(g) A telecommunications central switching office.

(h) A deepwater port or railroad switching yard.

(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(2) As used in this section, the terms “security officer” and “security agency manager” mean a security officer or security agency manager who possess a valid Class “D” or Class “MB” license pursuant to s. 493.6301 and a valid Class “G” license pursuant to s. 493.6115.

(3) A security officer or security agency manager who is on duty, in uniform, and on the premises of a critical infrastructure facility, and who has probable cause to believe that a person has committed or is committing a crime against the client operating the premises or the client’s patron may temporarily detain the person to ascertain his or her identity and the circumstances of the person’s activity.

(4) When temporarily detaining a person, the security officer or security agency manager shall notify the appropriate law enforcement agency of the detention as soon as reasonably possible. A security officer or security agency manager may temporarily detain a person only until a law enforcement officer arrives at the premises of the client and is in the presence of the detainee. Upon arrival of the law enforcement officer, the security officer or security agency manager shall immediately transfer custody of a person being temporarily detained to the responding law enforcement officer.

(5) A security officer or security agency manager may not detain a person under this section after the arrival of a law enforcement officer unless the law enforcement officer requests that the security officer or security agency manager continue detaining the person. The authority of the security officer or security agency manager to continue detaining a person after the arrival of a law enforcement officer under this subsection does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

(6) A security officer or security agency manager may not temporarily detain a person under this section longer than is reasonably necessary to affect the purposes of this section.

(7) While detaining a person under this section, if a security officer or security agency manager observes that the person temporarily detained is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, the security agency manager, or any person for whom the security officer or security agency manager is responsible for providing protection, or if the detainee admits to having a weapon in his or her possession, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary to disclose the presence of a weapon. If the security officer or security agency manager finds a weapon during the search, he or she shall seize and transfer the weapon to the responding law enforcement officer.

(8) A security officer or security agency manager who possesses a valid Class “G” license shall perform duties regulated under this section in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager.

(9) A law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with this section.

# PART IV REPOSSESSION SERVICES

## 493.6401 Classes of licenses.—

(1) Any person, firm, company, partnership, or corporation which engages in business as a recovery agency shall have a Class “R" license. A Class “R" license is valid for only one location.

(2) Each branch office of a Class “R" agency shall have a Class “RR" license.

(3) Any individual who performs the services of a manager for a Class “R" recovery agency or a Class “RR" branch office must have a Class “MR" license. A Class “E" licensee may be designated as the manager, in which case the Class “MR" license is not required.

(4) Any individual who performs the services of a recovery agent must have a Class “E" license.

(5) Any individual who performs repossession as an intern under the direction and control of a designated, sponsoring Class “E" licensee or a designated, sponsoring Class “MR" licensee shall have a Class “EE" license.

(6) Class “E" or Class “EE" licensees shall own or be an employee of a Class “R" agency or branch office.

(7) Any person who operates a recovery agent school or training facility or who conducts an Internet-based training course or a correspondence training course must have a Class “RS" license.

(8) Any individual who teaches or instructs at a Class “RS" repossessor school or training facility shall have a Class “RI" license.

## 493.6402 Fees.—

(1) The department shall establish by rule license fees not to exceed the following:

(a) Class “R" license-recovery agency: $450.

(b) Class “RR" license-branch office: $125.

(c) Class “MR" license-recovery agency manager: $75.

(d) Class “E" license-recovery agent: $75.

(e) Class “EE" license-recovery agent intern: $60.

(f) Class “RS" license-recovery agent school or training facility: $60.

(g) Class “RI" license-recovery agent school or training facility instructor: $60.

(2) The department may establish by rule a fee for the replacement or revision of a license, which fee shall not exceed $30.

(3) The fees set forth in this section must be paid by check or money order, or, at the discretion of the department, by electronic funds transfer at the time the application is approved, except that the applicant for a Class “E," Class “EE," or Class “MR" license must pay the license fee at the time the application is made. If a license is revoked or denied, or if an application is withdrawn, the license fee is nonrefundable.

(4) The initial license fee for a veteran, as defined in s. 1.01, shall be waived if he or she applies for a Class “E,” Class “EE,” Class “MR,” or Class “RI” license within 24 months after being discharged from any branch of the United States Armed Forces. An eligible veteran must include a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans’ Affairs with his or her application in order to obtain a waiver.

## 493.6403 License requirements.—

(1) In addition to the license requirements set forth in this chapter, each individual or agency shall comply with the following additional requirements:

(a) Each agency or branch office must designate a minimum of one appropriately licensed individual to act as manager, directing the activities of the Class “E" or Class “EE" employees. A Class “E" licensee may be designated to act as manager of a Class “R" agency or branch office in which case the Class “MR" license is not required.

(b) An applicant for Class “MR" license shall have at least 1 year of lawfully gained, verifiable, full-time experience as a Class “E" licensee performing repossessions of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment.

(c) An applicant for a Class “E" license shall have at least 1 year of lawfully gained, verifiable, full-time experience in one, or a combination of more than one, of the following:

1. Repossession of motor vehicles as defined in ss. 320.01(1), mobile homes as defined in ss. 320.01(2), motorboats as defined in ss. 327.02, aircraft as defined in s. 330.27(1), personal watercraft as defined in s. 327.02, all-terrain vehicles as defined in s. 316.2074, farm equipment as defined under s. 686.402, or industrial equipment as defined in s. 493.6101(22).

2. Work as a Class “EE" licensed intern.

(2) An applicant for a Class “E" or a Class “EE" license must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content for the training.

## 493.6404 Property inventory; vehicle license identification numbers.—

(1) If personal effects or other property not covered by a security agreement are contained in or on a recovered vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment at the time it is recovered, a complete and accurate inventory shall be made of such personal effects or property. The date and time the inventory is made shall be indicated, and it shall be signed by the Class “E" or Class “EE" licensee who obtained the personal property. The inventory of the personal property and the records regarding any disposal of personal property shall be maintained for a period of 2 years in the permanent records of the licensed agency and shall be made available, upon demand, to an authorized representative of the department engaged in an official investigation.

(2) Within 5 working days after the date of a repossession, the Class “E" or Class “EE" licensee shall give written notification to the debtor of the whereabouts of personal effects or other property inventoried pursuant to this section. At least 45 days prior to disposing of such personal effects or other property, the Class “E" or Class “EE" licensee shall, by United States Postal Service proof of mailing or certified mail, notify the debtor of the intent to dispose of said property. Should the debtor, or her or his lawful designee, appear to retrieve the personal property, prior to the date on which the Class “E" or Class “EE" licensee is allowed to dispose of the property, the licensee shall surrender the personal property to that individual upon payment of any reasonably incurred expenses for inventory and storage. If personal property is not claimed within 45 days of the notice of intent to dispose, the licensee may dispose of the personal property at her or his discretion, except that illegal items or contraband shall be surrendered to a law enforcement agency, and the licensee shall retain a receipt or other proof of surrender as part of the inventory and disposal records she or he maintains.

(3) Vehicles used for the purpose of repossession by a Class “E" or Class “EE" licensee must be identified during repossession by the license number of the Class “R" agency only, local ordinances to the contrary notwithstanding. These vehicles are not “wreckers" as defined in ss. 713.78. The license number must be displayed on both sides of the vehicle and must appear in lettering no less than 4 inches tall and in a color contrasting from that of the background.

## 493.6405 Sale of motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a licensee; penalty.—

(1) A Class “E" or Class “EE" licensee shall obtain, prior to sale, written authorization and a negotiable title from the owner or lienholder to sell any repossessed motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment.

(2) A Class “E" or Class “EE" licensee shall send the net proceeds from the sale of such repossessed motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment to the owner or lienholder, within 20 working days after the licensee executes the documents which permit the transfer of legal ownership to the purchaser.

(3) A person who violates a provision of this section commits a felony of the third degree, punishable as provided in ss. 775.082, ss. 775.083, or ss. 775.084.

## 493.6406 Recovery agent school or training facility.—

(1) Any school, training facility, or instructor who offers the training outlined in ss. 493.6403(2) for Class “E” or Class “EE" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application accompanied by an application fee in an amount to be determined by rule, not to exceed $60. The fee shall not be refundable. This training may be offered as face-to-face training, Internet-based training, or correspondence training.

(2) The application must be signed and verified by the applicant under oath as provided in s. 92.525 and shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class “RS” school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

(3) The department shall adopt rules establishing the criteria for approval of schools, training facilities, and instructors.

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# Lodging and Food Service Establishments; Membership Campgrounds

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# Part I Public Lodging and Public Food Service Establishment

## 509.013 Definitions.——

As used in this chapter, the term:

(1) "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(2) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(3) "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(4) (a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a non-transient public lodging establishment as defined in subparagraph 2.

1. “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. “Non-transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month

License classifications of public lodging establishments, and the definitions therefore, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families, or other similar place regulated under s.381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;

4. Any unit or group of units in a condominium, cooperative, or time-share plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008—381.00895;

6. Any establishment inspected by the Department of Health and regulated by chapter 513; and

7. Any nonprofit organization that operates a facility providing housing only to patients, patients’ families, and patients’ caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department’s behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. [509.242](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0509/Sections/0509.242.html).

(5) (a) “Public food service establishment” means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(6) “Director” means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(7) “Single complex of buildings” means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(8) “Temporary food service event” means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(9) “Theme park or entertainment complex” means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(10) “Third-party provider” means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(11) “Transient establishment” means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests’ occupancy will be temporary.

(12) “Transient occupancy” means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(13) “Transient” means a guest in transient occupancy.

(14) “Nontransient establishment” means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(15) “Nontransient occupancy” means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(16) “Nontransient” means a guest in nontransient occupancy.

## 509.032 Duties

(1) GENERAL. The division shall carry out all of the provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of public lodging establishments and public food service establishments for the purpose of safeguarding the public health, safety, and welfare. The division shall be responsible for ascertaining that an operator licensed under this chapter does not engage in any misleading advertising or unethical practices.

(2) INSPECTION OF PREMISES.

(a) The division has jurisdiction and is responsiblefor all inspections required by this chapter. The division has responsibility for quality assurance. The division shall inspect each licensed public lodging establishmentat least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public’s health, safety, and welfare. The division shall adopt by rule a risk-based inspection frequency for each licensed public food service establishment.. The rule must require at least one, but not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall annually reassess the inspection frequency of all licensed public food service establishments at least annually. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(b) For purposes of performing required inspections and the enforcement of this chapter, the division, has the right of entry and access to public lodging establishments and public food service establishments at any reasonable time.

(c) Public food service establishment inspections shall be conducted to enforce provisions of this part and to educate, inform, and promote cooperation between the division and the establishment.

(d) The division shall adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness in those establishments licensed under this chapter. These rules shall provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the division. The division may not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any public lodging or public food service establishment. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. The division shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which govern public lodging and public food service establishments. Further, the division shall enforce the provisions of the Florida Building Code which govern public lodging and public food service establishments. Further, the division shall enforce the provisions of the Florida Building Code which apply to public lodging and public food service establishments in conducting any inspections authorized by this part. The division, or its agent, shall notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under chapter 633 which relates to public lodging establishments or public food establishments, and the identification of such violation does not require any firesafety inspection certification.

(e) 1. Relating to facility plan approvals, the division may establish, by rule, fees for conducting plan reviews and may grant variances from construction standards in hardship cases, which variances may be less restrictive than the provisions specified in this section or the rules adopted under this section. A variance may not be granted pursuant to this section until the division is satisfied that:

a. The variance shall not adversely affect the health of the public.

b. No reasonable alternative to the required construction exists.

c. The hardship was not caused intentionally by the action of the applicant.

2. The division's advisory council shall review applications for variances and recommend agency action. The division shall make arrangements to expedite emergency requests for variances, to ensure that such requests are acted upon within 30 days of receipt.

3. The division shall establish, by rule, a fee for the cost of the variance process. Such fee shall not exceed $150 for routine variance requests and $300 for emergency variance requests.

(f) In conducting inspections of establishments licensed under this chapter, the division shall determine if each coin-operated amusement machine that is operated on the premises of a licensed establishment is properly registered with the Department of Revenue. Each month, the division shall report to the Department of Revenue the sales tax registration number of the operator of any licensed establishment that has on location a coin-operated amusement machine and that does not have an identifying certificate conspicuously displayed as required by s. 212.05(1)(h).

(g) In inspecting public food service establishments, the department shall notify each inspected establishment of the availability of the food-recovery brochure developed under s. 595.420.

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS. The division shall:

(a) Prescribe sanitary standards which shall be enforced in public food service establishments.

(b) Inspect public lodging establishments and public food service establishments whenever necessary to respond to an emergency or epidemiological condition.

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor’s current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of, the food-recovery brochure developed under s. 595.420.

3. a. Unless excluded under s. 509.013(5)(b), a public food service establishment or other food service vendor must obtain one of the following classes of a license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(4) STOP-SALE ORDERS. The division may stop the sale, and supervise the proper destruction, of any food or food product when the director or the director’s designee determines that such food or food product represents a threat to the public safety or welfare. If the operator of a public food service establishment licensed under this chapter has received official notification from a health authority that a food or food product from that establishment has potentially contributed to any instance or outbreak of food-borne illness, the food or food product must be maintained in safe storage in the establishment until the responsible health authority has examined, sampled, seized, or requested destruction of the food or food product.

(5) REPORTS REQUIRED. The division shall submit annually to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees a report which shall state, but need not be limited to the total number of active public lodging and public food service licenses in the state,, the total number of inspections of these establishments conducted by the division to ensure the enforcement of sanitary standards, the total number of inspections conducted in response to emergency or epidemiological conditions, the number of violations of each sanitary standard, the total number of inspections conducted to meet the statutorily required number of inspections, and any recommendations for improved inspection procedures. The division shall also keep accurate account of all expenses arising out of the performance of its duties and all fees collected under this chapter. The report shall be submitted by September 30 following the end of the fiscal year.

(6) RULEMAKING AUTHORITY. The division shall adopt such rules as are necessary to carry out the provisions of this chapter.

(7) PREEMPTION AUTHORITY.

(a) The regulation of public lodging establishments and public food service establishments, including, but not lim­ited to sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may not or regulate the duration or frequency of rental of vacation. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

Section 2. This act shall take effect July 1, 2014

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.

## 509.034 Application.——

Sections 509.141—509.162 and 509.401—509.417 apply to transients only. This chapter may not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

## 509.035 Immediate closure due to severe public health threat.——

The division shall, upon proper finding, immediately issue an order to close an establishment licensed under this chapter in the instance of a severe and immediate public health or safety or welfare threat as follows:

(1) (a) The director shall declare a public health threat upon a proper finding by the State Health Officer that the continued operation of a licensed establishment presents a severe and immediate threat to the public health.

(b) The director shall declare a threat to the public safety or welfare upon a proper finding by the director that the continued operation of a licensed establishment presents a severe and immediate threat to the public safety or welfare.

(2) Upon such determination, the division shall issue a notice to show cause and an emergency order of suspension. Such order shall be served upon the establishment by the division or its agent, and the establishment shall be closed. An operator who resists such closure is subject to further administrative action by the division and is punishable as provided in s. 509.281. The division shall provide an inspection within 24 hours following such closure and shall review all relevant information to determine whether the facility has met the requirements to resume operations.

(3) The division may attach a sign which states "Closed to Protect Public Health and Safety" to such an establishment and may require the licensee to immediately stop service until notification to the contrary is provided by the director.

## 509.036 Public food service inspector standardization.——

(1) Any person performing required inspections of licensed public food service establishments for the division or its agent must:

(a) Be standardized by a food service evaluation officer certified by the federal Food and Drug Administration;

(b) Pass the food protection practices test prescribed by s. 509.039; and

(c) Pass a written examination to demonstrate knowledge of the laws and rules which regulate public food service establishments.

(2) The division or its agent shall provide a minimum of 20 hours of continuing education annually for each public food service inspector. This continuing education shall include instruction in techniques to prevent food-borne illness, sanitation, and a review of relevant laws.

(3) An inspector may be subject to suspension or dismissal for cause as set forth in s. 110.227.

(4) Any costs incurred as a direct result of the requirements of subsection (1) shall be funded from the Hotel and Restaurant Trust Fund from the amounts deposited from public food service establishment license fees.

## 509.039 Food service manager certification.——

It is the duty of the division to adopt, by rule, food safety protection standards for the training and certification of all food service managers who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. The standards adopted by the division shall be consistent with the Standards for Accreditation of Food Protection Manager Certification Programs adopted by the conference for Food Protection. These standards are to be adopted by the division to ensure that, upon successfully passing a test, approved by the Conference for Food Protection, a manager of a food service establishment shall have demonstrated a knowledge of basic food protection practices. The division may contract with an organization offering a training and certification program that complies with division standards and results in a certification recognized by the Conference for Food Protection to conduct an approved test and certify all test results to the division. Other organizations offering programs that meet the same requirements may also conduct approved tests and certify all test results to the division. The division may charge the organization it contracts with a fee of not more than $5 per certified test to cover the administrative costs of the division for the food service manager training and certification program. All managers employed by a food service establishment must have passed an approved test and received a certificate attesting thereto. Managers have a period of 30 days after employment to pass the required test. All public food service establishments must provide the division with proof of food service manager certification upon request, including, but not limited to, at the time of any division inspection of the establishment. The ranking of food service establishments is also preempted to the state; provided, however, that any local ordinances establishing a ranking system in existence prior to October 1, 1988, may remain in effect.

## 509.049 Food service employee training. ——

(1) The division shall adopt, by rule, minimum food safety protection standards for the training of all food service employees who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. These standards shall not include an examination, but shall provide for a food safety training certificate program for food service employees to be administered by a private nonprofit provider chosen by the division.

(2) The division shall issue a request for competitive sealed proposals which includes a statement of the contractual services sought and all terms and conditions applicable to the contract. The division shall award the contract to the provider whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The division shall contract with a provider on a 4-year basis and is authorized to promulgate by rule a per employee fee to cover the contracted price for the program administered by the provider. In making its selection, the division shall consider factors including, but not limited to, the experience and history of the provider in representing the food service industry, the provider's demonstrated commitment to food safety, and its ability to provide a statewide program with industry support and participation.

(3) Any food safety training program established and administered to food service employees utilized at a licensed public food service establishment prior to July 1, 2000, shall be submitted by the operator or the third party provider to the division for its review and approval on or before September 1, 2004. If the food safety training program is found to be in substantial compliance with the division’s required criteria and is approved by the division, nothing in this section shall preclude any other operator of a food service establishment from also utilizing the approved program or require the employees of any operator to receive training from or pay a fee to the division's contracted provider. Review and approval by the division of a program or programs under this section shall include, but not be limited to, verification that the licensed public food service establishment utilized the program prior to July 1, 2000, and the minimum food safety standards adopted by the division in accordance with this section.

(4) Approval of a program is subject to the provider’s continued compliance with the division’s minimum program standards. The division may conduct random audits of any approved programs to determine compliance and may audit any program if it has reason to believe a program is not in compliance with this section. The division may revoke a program’s approval if it finds a program is not in compliance with this section or the rules adopted under this section.

(5) It shall be the duty of each public food service establishment to provide training in accordance with the described rule to all food service employees of the public food service establishment. The public food service establishment may designate any certified food service manager to perform this function. Food service employees must receive certification within 60 days after employment. Certification pursuant to this section shall remain valid for 3 years. All public food service establishments must provide the division with proof of employee training upon request, including, but not limited to, at the time of any division inspection of the establishment. Proof of training for each food service employee shall include the name of the trained employee, the date of birth of the trained employee, the date the training occurred, and the approved food safety training program used.

(6) (a) Third party providers shall issue to a public food service establishment an original certificate for each employee certified by the provider and an original card to be provided to each certified employee. Such card or certificate shall be produced by the certified food service employee or by the public food service establishment, respectively, in its duly issued original form upon request of the division.

(b) Each third party provider shall provide the following information on each employee upon certification and recertification: the name of the certified food service employee, the employee's date of birth, the employing food service establishment, the name of the certified food manager who conducted the training, the training date, and the certification expiration date. This information shall be reported electronically to the division, in a format prescribed by the division, within 30 days of certification or recertification. The division shall compile the information into an electronic database that is not directly or indirectly owned, maintained, or installed by any nongovernmental provider of food service training. A public food service establishment that trains its employees using its own in-house, proprietary food safety training program approved by the division, and which uses its own employees to provide this training, shall be exempt from the electronic reporting requirements of this paragraph, and from the card or certificate requirement of paragraph (a).

(7) The division may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this section. The rules may require:

(a) The use of application forms, which may require, but need not be limited to, the identification of training components of the program and an applicant affidavit attesting to the accuracy of the information provided in this application;

(b) Third party providers to maintain and electronically submit information concerning establishments where they provide training or training programs pursuant to this section;

(c) Specific subject matter related to food safety for use in training program components; and

(d) The public food service establishment to be responsible for providing proof of employee training pursuant to this section, and the division may request production of such proof upon inspection of the establishment.

(8) The following are violations for which the division may impose administrative fines of up to $1,000 on a public food service establishment, or suspend or revoke the approval of a particular provider's use of a food safety training program:

(a) Failure of a public food service establishment to provide proof of training pursuant to subsection (5) upon request by the division or an original certificate to the division when required pursuant to paragraph (6)(a).

(b) Failure of a third party provider to submit required records pursuant to paragraph (6)(b) or to provide original certificates or cards to a public food service establishment or employee pursuant to paragraph (6)(a).

(c) Participating in falsifying any training record.

(d) Failure of the program to maintain the division's minimum program standards. This act shall take effect July 1, 2004.

## 509.072 Hotel and Restaurant Trust Fund; collection and disposition of moneys received.——

(1) There is created a Hotel and Restaurant Trust Fund to be used for the administration and operation of the division and the carrying out of all laws and rules under the jurisdiction of the division pertaining to the construction, maintenance, and operation of public lodging establishments and public food service establishments, including the inspection of elevators as required under chapter 399. All funds collected by the division and the amounts paid for licenses and fees shall be deposited in the State Treasury into the Hotel and Restaurant Trust Fund.

(2) Fees collected under s. 509.302(2) and deposited into the trust fund must be used solely for the purpose of funding the Hospitality Education Program, except for any trust fund service charge imposed by s. 215.20, and may not be used to pay for any expense of the division not directly attributable to the Hospitality Education Program. These funds may not be deposited or transferred into any other trust fund administered by the Department of Business and Professional Regulation or any of its divisions. For audit purposes, fees collected under s. 509.302(2) and all charges against those fees must be maintained by the department as a separate ledger.

## 509.091 Notices; form and service.——

(1) Each notice served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division or by registered letter to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice in a conspicuous place at the establishment.

(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.

## 509.092 Public lodging establishments and public food service establishments; rights as private enterprises.——

Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

## 509.095 Accommodations at public lodging establishments for individuals with a valid military identification card.—

Upon the presentation of a valid military identification card by an individual who is currently on active duty as a member of the United States Armed Forces, National Guard, Reserve Forces, or Coast Guard, and who seeks to obtain accommodations at a hotel, motel, or bed and breakfast inn, as defined in s. [509.242](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0509/Sections/0509.242.html), such hotel, motel, or bed and breakfast inn shall waive any minimum age policy that it may have which restricts accommodations to individuals based on age. Duplication of a military identification card presented pursuant to this section is prohibited.

## 509.096 Human trafficking awareness training and policies for employees of public lodging establishments; enforcement.—

(1) A public lodging establishment shall:

(a) Provide annual training regarding human trafficking awareness to employees of the establishment who perform housekeeping duties in the rental units or who work at the front desk or reception area where guests ordinarily check in or check out. Such training must also be provided for new employees within 60 days after they begin their employment in those roles, or by January 1, 2021, whichever occurs later. Each employee must submit to the hiring establishment a signed and dated acknowledgment of having received the training, which the establishment must provide to the Department of Business and Professional Regulation upon request. The establishment may keep such acknowledgment electronically.

(b) By January 1, 2021, implement a procedure for the reporting of suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency.

(c) By January 1, 2021, post in a conspicuous location in the establishment which is accessible to employees a human trafficking public awareness sign at least 11 inches by 15 inches in size, printed in an easily legible font and in at least 32-point type, which states in English and Spanish and any other language predominantly spoken in that area which the department deems appropriate substantially the following:

“If you or someone you know is being forced to engage in an activity and cannot leave, whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity, call the National Human Trafficking Resource Center at 888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.”

(2) The human trafficking awareness training required under paragraph (1)(a) must be submitted to and approved by the Department of Business and Professional Regulation [1](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0509/Sections/0509.096.html#1)and must include all of the following:

(a) The definition of human trafficking and the difference between the two forms of human trafficking: sex trafficking and labor trafficking.

(b) Guidance specific to the public lodging sector concerning how to identify individuals who may be victims of human trafficking.

(c) Guidance concerning the role of the employees of a public lodging establishment in reporting and responding to suspected human trafficking.

(3) The division shall impose an administrative fine of $2,000 per day on a public lodging establishment that is not in compliance with this section and remit the fines to the direct-support organization established under s. [16.618](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0016/Sections/0016.618.html), unless the division receives adequate written documentation from the public lodging establishment which provides assurance that each deficiency will be corrected within 90 days after the division provided the public lodging establishment with notice of its violation.

(4) This section does not establish a private cause of action. This section does not alter or limit any other existing remedies available to survivors of human trafficking.

## 509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.——

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying, sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as the guest or employee remains in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the services or facilities of the operator. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted in a prominent place within such public lodging establishment or public food service establishment. In addition, any operator of a public food service establishment shall maintain a copy of the latest food service inspection report and shall make it available to the division at the time of any division inspection of the establishment and to the public upon request.

(2) It is the duty of each operator of a transient establishment to maintain at all times a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register shall be maintained in chronological order and available for inspection by the division at any time. Operators need not make available registers which are more than 2 years old.

(3) It is the duty of each operator of a public food service establishment that provides commissary services to maintain a daily registry verifying that each mobile food dispensing vehicle that receives such services is properly licensed by the division. In order that such licensure may be readily verified, each mobile food dispensing vehicle operator shall permanently affix in a prominent place on the side of the vehicle, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle matches the number on the vehicle operator's public food service establishment license.

## 509.102 Mobile food dispensing vehicles; preemption——

(1) As used in this section, the term “mobile food dispensing vehicle” means any vehicle that is a public food service establishment and that is selfpropelled or otherwise movable from place to place and includes selfcontained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(2) Regulation of mobile food dispensing vehicles involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle within the entity’s jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles from operating within the entirety of the entity’s jurisdiction.

(3) This section may not be construed to affect a municipality, county, or other local governmental entity’s authority to regulate the operation of mobile food dispensing vehicles other than the regulations described in subsection (2).

(4) This section does not apply to any port authority, aviation authority, airport, or seaport.

## 509.111 Liability for property of guests.——

(1) The operator of a public lodging establishment is not under any obligation to accept for safekeeping any moneys, securities, jewelry, or precious stones of any kind belonging to any guest, and, if such are accepted for safekeeping, the operator is not liable for the loss thereof unless such loss was the proximate result of fault or negligence of the operator. However, the liability of the operator shall be limited to $1,000 for such loss, if the public lodging establishment gave a receipt for the property (stating the value) on a form which stated, in type large enough to be clearly noticeable, that the public lodging establishment was not liable for any loss exceeding $1,000 and was only liable for that amount if the loss was the proximate result of fault or negligence of the operator.

(2) The operator of a public lodging establishment is not liable or responsible to any guest for the loss of wearing apparel, goods, or other property, except as provided in subsection (1), unless such loss occurred as the proximate result of fault or negligence of such operator, and, in case of fault or negligence, the operator is not liable for a greater sum than $500, unless the guest, prior to the loss or damage, files with the operator an inventory of his effects and the value thereof and the operator is given the opportunity to inspect such effects and check them against such inventory. The operator of a public lodging establishment is not liable or responsible to any guest for the loss of effects listed in such inventory in a total amount exceeding $1,000.

## 509.141 Refusal of admission and ejection of undesirable guests; notice; procedure; penalties for refusal to leave.——

(1) The operator of any public lodging establishment or public food service establishment may remove or cause to be removed from such establishment, in the manner hereinafter provided, any guest of the establishment who, while on the premises of the establishment, illegally possesses or deals in controlled substances as defined in chapter 893 or is intoxicated, profane, lewd, or brawling; who indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; who, in the case of a public lodging establishment, fails to make payment of rent at the agreed-upon rental rate by the agreed-upon check-out time; who, in the case of a public lodging establishment, fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to check-out; who, in the case of a public food service establishment, fails to make payment for food, beverages, or services; or who, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment. The admission to, or the removal from, such establishment shall not be based upon race, creed, color, sex, physical disability, or national origin.

(2) The operator of any public lodging establishment or public food service establishment shall notify such guest that the establishment no longer desires to entertain the guest and shall request that such guest immediately depart from the establishment. Such notice may be given orally or in writing. If the notice is in writing, it shall be as follows:

"You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

If such guest has paid in advance, the establishment shall, at the time such notice is given, tender to such guest the unused portion of the advance payment; however, the establishment may withhold payment for each full day that the guest has been entertained at the establishment for any portion of the 24—hour period of such day.

(3) Any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If any person is illegally on the premises of any public lodging establishment or public food service establishment, the operator of such establishment may call upon any law enforcement officer of this state for assistance. It is the duty of such law enforcement officer, upon the request of such operator, to place under arrest and take into custody for violation of this section any guest who violates subsection (3) in the presence of the officer. If a warrant has been issued by the proper judicial officer for the arrest of any violator of subsection (3), the officer shall serve the warrant, arrest the person, and take the person into custody. Upon arrest, with or without warrant, the guest will be deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises, and the operator of the establishment may then make such premises available to other guests. However, the operator of the establishment shall employ all reasonable and proper means to care for any personal property which may be left on the premises by such guest and shall refund any unused portion of moneys paid by such guest for the occupancy of such premises.

## 509.142 Conduct on premises; refusal of service.——

The operator of a public lodging establishment or public food service establishment may refuse accommodations or service to any person whose conduct on the premises of the establishment displays intoxication, profanity, lewdness, or brawling; who indulges in language or conduct such as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; who illegally possesses or deals in controlled substances as defined in chapter 893; or whose conduct constitutes a nuisance. Such refusal may not be based upon race, creed, color, sex, physical disability, or national origin.

## 509.143 Disorderly conduct on the premises of an establishment; detention; arrest; immunity from liability.——

(1) An operator may take a person into custody and detain that person in a reasonable manner and for a reasonable time if the operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03 on the premises of the licensed establishment and that such conduct was creating a threat to the life or safety of the person or others. The operator shall call a law enforcement officer to the scene immediately after detaining a person under this subsection.

(2) A law enforcement officer may arrest, either on or off the premises of the licensed establishment and without a warrant, any person the officer has probable cause to believe violated s. 877.03 on the premises of a licensed establishment and, in the course of such violation, created a threat to the life or safety of the person or others.

(3) An operator or a law enforcement officer who detains a person under subsection (1) or makes an arrest under subsection (2) is not civilly or criminally liable for false arrest, false imprisonment, or unlawful detention on the basis of any action taken in compliance with subsection (1) or subsection (2).

(4) A person who resists the reasonable efforts of an operator or a law enforcement officer to detain or arrest that person in accordance with this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless the person did not know or did not have reason to know that the person seeking to make such detention or arrest was the operator of the establishment or a law enforcement officer.

## 509.144 Prohibited handbill distribution in a public lodging establishment; penalties.—

This act may be cited as the “Tourist Safety Act of 2005.”

(1) As used in this section, the term:

(a) “Handbill” means a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about a person, business, company, or food service establishment but does not include employee communications permissible under the National Labor Relations Act, other communications protected by the First Amendment to the United States Constitution, or communications about public health, safety, or welfare distributed by a federal, state, or local governmental entity or a public or private utility.

(b) “Without permission” means without the expressed written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (5).

(c) “At or in a public lodging establishment” means any property under the sole ownership or control of a public lodging establishment.

(2) Any person, agent, contractor, or volunteer who is acting on behalf of a person, business, company, or food service establishment and who, without permission, delivers, distributes, or places, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who, without permission, directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person sentenced under this subsection shall be ordered to pay a minimum fine of $500 in addition to any other penalty imposed by the court.

(4) In addition to any penalty imposed by the court, a person who violates subsection (2) or subsection (3);

(a) Shall pay a minimum fine of $2,000 for a second violation.

(b) Shall pay a minimum fine of $3,000 for a third or subsequent violation.

(5) For purposes of this section, a public lodging establishment that intends to prohibit advertising or solicitation, as described in this section, at or in such establishment must comply with the following requirements when posting a sign prohibiting such solicitation or advertising:

(a) There must appear prominently on any sign referred to in this subsection, in letters of not less than 2 inches in height, the terms “no advertising” or “no solicitation” or terms that indicate the same meaning.

(b) The sign must be posted conspicuously.

(c) If the main office of the public lodging establishment is immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed on a part of the main office, such as a door or window, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(d) If the main office of the public lodging establishment is not immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed in the immediate vicinity of the

main entrance to such establishment, and the sign must face the street, parking lot, grounds, or other area outside such establishment. This act shall take effect July 1, 2005.

(6) Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

## 509.151 Obtaining food or lodging with intent to defraud; penalty.——

(1) Any person who obtains food, lodging, or other accommodations having a value of less than $1,000 at any public food service establishment, or at any transient establishment, with intent to defraud the operator thereof, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; if such food, lodging, or other accommodations have a value of $1,000 or more, such person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) This section does not apply where there has been an agreement in writing for delay in payments. This section shall not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

## 509.161 Rules of evidence in prosecutions.——

In prosecutions under s. 509.151, proof that lodging, food, or other accommodations were obtained by false pretense; by false or fictitious show of baggage or other property; by absconding without paying or offering to pay for such food, lodging, or accommodations; or by surreptitiously removing or attempting to remove baggage shall constitute prima facie evidence of fraudulent intent. If the operator of the establishment has probable cause to believe, and does believe, that any person has obtained food, lodging, or other accommodations at such establishment with intent to defraud the operator thereof, the failure to make payment upon demand therefor, there being no dispute as to the amount owed, shall constitute prima facie evidence of fraudulent intent in such prosecutions.

## 509.162 Theft of personal property; detaining and arrest of violator; theft by employee.——

(1) Any law enforcement officer or operator of a public lodging establishment or public food service establishment who has probable cause to believe that theft of personal property belonging to such establishment has been committed by a person and that the officer or operator can recover such property or the reasonable value thereof by taking the person into custody may, for the purpose of attempting to effect such recovery or for prosecution, take such person into custody on the premises and detain such person in a reasonable manner and for a reasonable period of time. If the operator takes the person into custody, a law enforcement officer shall be called to the scene immediately. The taking into custody and detention by a law enforcement officer or operator of a public lodging establishment or public food service establishment, if done in compliance with this subsection, does not render such law enforcement officer or operator criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Any law enforcement officer may arrest, either on or off the premises and without warrant, any person if there is probable cause to believe that person has committed theft in a public lodging establishment or in a public food service establishment.

(3) Any person who resists the reasonable effort of a law enforcement officer or operator of a public lodging establishment or public food service establishment to recover property which the law enforcement officer or operator had probable cause to believe had been stolen from the public lodging establishment or public food service establishment, and who is subsequently found to be guilty of theft of the subject property, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless such person did not know, or did not have reason to know, that the person seeking to recover the property was a law enforcement officer or the operator. For purposes of this section, the charge of theft and the charge of resisting apprehension may be tried concurrently.

(4) Theft of any property belonging to a guest of an establishment licensed under this chapter, or of property belonging to such establishment, by an employee of the establishment or by an employee of a person, firm, or entity which has contracted to provide services to the establishment constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

## 509.191 Unclaimed property.——

Any property with an identifiable owner which is left in a public lodging establishment or public food service establishment, other than property belonging to a guest who has vacated the premises without notice to the operator and with an outstanding account, which property remains unclaimed after being held by the establishment for 30 days after written notice to the guest or owner of the property, shall become the property of the establishment. Property without an identifiable owner which is found in a public lodging establishment or public food service establishment is subject to the provisions of chapter 705.

## 509.2015 Telephone surcharges by public lodging establishments.——

(1) A public lodging establishment which imposes a surcharge for any telephone call must post notice of such surcharge in a conspicuous place located by each telephone from which a call which is subject to a surcharge may originate. Such notice must be plainly visible and printed on a sign that is not less than 3 inches by 5 inches in size, and such notice shall clearly state if the surcharge applies whether or not the telephone call has been attempted or completed.

(2) The division may, pursuant to s. 509.261, suspend or revoke the license of, or impose a fine against, any public lodging establishment that violates subsection (1).

## 509.211 Safety regulations.——

(1) Each bedroom or apartment in each public lodging establishment shall be equipped with an approved locking device on each door opening to the outside, to an adjoining room or apartment, or to a hallway.

(2) (a) It is unlawful for any person to use within any public lodging establishment or public food service establishment any fuel-burning wick-type equipment for space heating unless such equipment is vented so as to prevent the accumulation of toxic or injurious gases or liquids.

(b) Any person who violates the provisions of paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Each public lodging establishment that is three or more stories in height must have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired. The division may impose administrative sanctions for violations of this subsection pursuant to s. 509.261.

(4) Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one or more carbon monoxide detector devices that are listed as complying with the American National Standards Institute/Underwriters Laboratories, Inc., “Standard for Gas and Vapor Detectors and Sensors,” ANSI/UL 2075, by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the local fire official or his or her designee. Such devices shall be integrated with the public lodging establishment’s fire detection system. Any such installation shall be made in accordance with rules adopted by the Division of State Fire Marshal. In lieu of connecting the carbon monoxide detector device to the fire detection system as described in this subsection, the device may be connected to a control unit that is listed as complying with the Underwriters Laboratories, Inc., “Standard for General-Purpose Signaling Devices and Systems,” UL 2017, or a combination system that is listed as complying with the National Fire Protection Association “Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment,” NFPA 720. The control unit or combination system must be connected to the boiler safety circuit in such a manner that the boiler is prevented from operating when carbon monoxide is detected until it is reset manually.

## 509.2112 Public lodging establishments three stories or more in height; inspection rules.——

The Division of Hotels and Restaurants of the Department of Business and Professional Regulation is directed to provide rules to require that:

(1) Every public lodging establishment that is three stories or more in height in the state file a certificate stating that any and all balconies, platforms, stairways, and railways have been inspected by a person competent to conduct such inspections and are safe, secure, and free of defects.

(2) The information required under subsection (1) be filed commencing January 1, 1991, and every 3 years thereafter, with the Division of Hotels and Restaurants and the applicable county or municipal authority responsible for building and zoning permits.

(3) If a public lodging establishment that is three or more stories in height fails to file the information required in subsection (1), the Division of Hotels and Restaurants shall impose administrative sanctions pursuant to s. 509.261.

## 509.213 Emergency first aid to choking victims.——

(1) Every public food service establishment shall post a sign which illustrates and describes the Heimlich Maneuver procedure for rendering emergency first aid to a choking victim in a conspicuous place in the establishment accessible to employees.

(2) The establishment shall be responsible for familiarizing its employees with the method of rendering such first aid.

(3) This section shall not be construed to impose upon a public food service establishment or employee thereof a legal duty to render such emergency assistance, and any such establishment or employee shall not be held liable for any civil damages as the result of such act or omission when the establishment or employee acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

## 509.214 Notification of automatic gratuity charge.——

Every public food service establishment which includes an automatic gratuity or service charge in the price of the meal shall include on the food menu and on the face of the bill provided to the customer notice that an automatic gratuity is included.

## 509.215 Firesafety.——

(1) Any:

(a) Public lodging establishment, as defined in this chapter, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress, or

(b) Building over 75 feet in height that has direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 "Standards for the Installation of Sprinkler Systems." The sprinkler installation may be omitted in closets which are not over 24 square feet in area and in bathrooms which are not over 55 square feet in area, which closets and bathrooms are located in guest rooms. Each guest room shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA-74 "Standards for the Installation, Maintenance and Use of Household Fire Warning Equipment," powered from the building electrical service, notwithstanding the number of stories in the structure or type or means of egress, if the contract for construction is let after September 30, 1983. Single-station smoke detection is not required when guest rooms contain smoke detectors connected to a central alarm system which also alarms locally.

(2) Any public lodging establishment, as defined in this chapter, which is of three stories or more and for which the construction contract was let before October 1, 1983, shall be equipped with:

(a) A system which complies with subsection (1); or

(b) An approved sprinkler system for all interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms, less individual guest rooms, if the following conditions are met:

1. There is a minimum 1-hour separation between each guest room and between each guest room and a corridor.

2. The building is constructed of noncombustible materials.

3. The egress conditions meet the requirements of s. 5-3 of the Life Safety Code, NFPA 101.

4. The building has a complete automatic fire detection system which meets the requirements of NFPA-72A and NFPA-72E, including smoke detectors in each guest room individually annunciating to a panel at a supervised location.

(3) Notwithstanding any other provision of law to the contrary, this section applies only to those public lodging establishments in a building wherein more than 50 percent of the units in the building are advertised or held out to the public as available for transient occupancy.

(4) (a) Special exception to the provisions of this section shall be made for a public lodging establishment structure that is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or is a contributing property to a National Register-listed district; or is designated as a historic property, or as a contributing property to a historic district under the terms of a local preservation ordinance.

(b) For such structures, provisions shall be made for a system of fire protection and lifesafety support that would meet the intent of the NFPA standards and be acceptable to, and approved by, a task force composed of the director of the Division of Hotels and Restaurants, the director of the Division of State Fire Marshal, and the State Historic Preservation Officer. When recommending alternative systems, the task force shall consider systems which would not disturb, destroy, or alter the integrity of such historic structures. The director of the Division of State Fire Marshal shall be designated chairperson of the task force and shall record the minutes of each task force meeting, which shall be called in a timely manner to review requests for special provision considerations under this subsection.

(5) The Division of State Fire Marshal shall adopt, in accordance with the provisions of chapter 120, any rules necessary for the implementation and enforcement of this section. The Division of State Fire Marshal shall enforce this section in accordance with the provisions of chapter 633, and any establishment licensed under this chapter in violation of this section may be subject to administrative sanctions by the division pursuant to s. 509.261.

(6) Specialized smoke detectors for the deaf and hearing impaired shall be available upon request by guests in public lodging establishments at a rate of at least one such smoke detector per 50 dwelling units or portions thereof, not to exceed five such smoke detectors per public lodging facility.

(7) The National Fire Protection Association publications referenced in this section are the ones most recently adopted by rule of the Division of State Fire Marshal of the Department of Financial Services.

## 509.221 Sanitary regulations.——

(1) (a) Each public lodging establishment shall be supplied with potable water and shall provide adequate sanitary facilities for the accommodation of its employees and guests. Such facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets. Such sanitary facilities shall be connected to approved plumbing. Such plumbing shall be sized, installed, and maintained in accordance with the Florida Building Code as approved by the local building authority. Wastewater or sewage shall be properly treated onsite or discharged into an approved sewage collection and treatment system.

(b) Each public food service establishment shall be supplied with potable water and shall provide adequate sanitary facilities for the accommodation of its employees. Such facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets. Such sanitary facilities shall be con­nected to approved plumbing. Such plumbing shall be sized, installed, and maintained in accordance with the Florida Building Code as approved by the local building authority. Wastewater or sewage shall be properly treated onsite or discharged into an approved sewage collection and treatment sys­tem.

(2) (a) Each public lodging establishment and each public food service establishment shall maintain public bathroom facilities in accordance with the Florida Building Code as approved by the local building authority. The division shall establish by rule categories of establishments not subject to the bathroom requirement of this paragraph. Such rules may not alter the exemption provided for theme parks in paragraph (b).

(b) Within a theme park or entertainment complex as defined in s. 509.013(9), the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

(c) Each transient establishment that does not provide private or connecting bathrooms shall maintain one public bathroom on each floor for every 15 guests, or major fraction of that number, rooming on that floor.

(3) Each establishment licensed under this chapter shall be properly lighted, heated, cooled, and ventilated and shall be operated with strict regard to the health, comfort, and safety of the guests. Such proper lighting shall be construed to apply to both daylight and artificial illumination.

(4) Each bedroom in a public lodging establishment shall have an opening to the outside of the building, air shafts, or courts sufficient to provide adequate ventilation. Where ventilation is provided mechanically, the system shall be capable of providing at least two air changes per hour in all areas served. Where ventilation is provided by windows, each room shall have at least one window opening directly to the outside.

(5) Each transient public lodging establishment shall provide in the main public bathroom soap and clean towels or other approved hand-drying devices and each public lodging establishment shall furnish each guest with two clean individual towels so that two guests will not be required to use the same towel unless it has first been laundered. Each public food service establishment shall provide in the employee bathroom and any public bathroom soap and clean towels or other approved hand-drying devices.

(6) Each transient establishment shall provide each bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets. Sheets and pillowslips shall be laundered before they are used by another guest, a clean set being furnished each succeeding guest. All bedding, including mattresses, quilts, blankets, pillows, sheets, and comforters, shall be thoroughly aired, disinfected, and kept clean. Bedding, including mattresses, quilts, blankets, pillows, sheets, or comforters, may not be used if they are worn out or unfit for further use.

(7) The operator of any establishment licensed under this chapter shall take effective measures to protect the establishment against the entrance and the breeding on the

premises of all vermin. Any room in such establishment infested with such vermin shall be fumigated, disinfected, renovated, or other corrective action taken until the vermin are exterminated.

(8) A person, while suffering from any contagious or communicable disease, while a carrier of such disease, or while afflicted with boils or infected wounds or sores, may not be employed by any establishment licensed under this chapter, in any capacity whereby there is a likelihood such disease could be transmitted to other individuals. An operator that has reason to believe that an employee may present a public health risk shall immediately notify the proper health authority.

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental nontransient apartment, or timeshare project as described in s. 509.242(1)(c), (d),and (g).

## 509.232 School carnivals and fairs; exemption from certain food service regulations.——

Any public or nonprofit school which operates a carnival, fair, or other celebration, by whatever name known, which is in operation for 3 days or less and which includes the sale and preparation of food and beverages must notify the local county health unit of the proposed event and is exempt from any temporary food service regulations with respect to the requirements for having hot and cold running water; floors which are constructed of tight wood, asphalt, concrete, or other cleanable material; enclosed walls and ceilings with screening; and certain size counter service. A school may not use this notification process to circumvent the license requirements of this chapter.

## 509.233 Public food service establishment requirements; local exemption for dogs in designated outdoor portions; pilot program.--

(1) LOCAL EXEMPTION AUTHORIZED.--Notwithstanding s. [509.032](http://www.flsenate.gov/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0509/Sec032.htm&StatuteYear=2005)(7), the governing body of a local government may establish, by ordinance, a local exemption procedure to certain provisions of the Food and Drug Administration Food Code, as currently adopted by the division, in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(2) LOCAL DISCRETION; CODIFICATION.--

(a) The adoption of the local exemption procedure shall be at the sole discretion of the governing body of a participating local government. Nothing in this section shall be construed to require or compel a local governing body to adopt an ordinance pursuant to this section.

(b) Any ordinance adopted pursuant to this section shall provide for codification within the land development code of a participating local government.

(3) LIMITATIONS ON EXEMPTION; PERMIT REQUIREMENTS.--

(a) Any local exemption procedure adopted pursuant to this section shall only provide a variance to those portions of the currently adopted Food and Drug Administration Food Code in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments.

(b) In order to protect the health, safety, and general welfare of the public, the local exemption procedure shall require participating public food service establishments to apply for and receive a permit from the governing body of the local government before allowing patrons' dogs on their premises. The local government shall require from the applicant such information as the local government deems reasonably necessary to enforce the provisions of this section, but shall require, at a minimum, the following information:

1. The name, location, and mailing address of the public food service establishment.

2. The name, mailing address, and telephone contact information of the permit applicant.

3. A diagram and description of the outdoor area to be designated as available to patrons' dogs, including dimensions of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated outdoor area; the boundaries of the designated area and of other areas of outdoor dining not available for patrons' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information reasonably required by the permitting authority. The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

4. A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

(c) In order to protect the health, safety, and general welfare of the public, the local exemption ordinance shall include such regulations and limitations as deemed necessary by the participating local government and shall include, but not be limited to, the following requirements:

1. All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the public food service establishment.

2. Patrons in a designated outdoor area shall be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.

3. Employees and patrons shall be instructed that they shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations.

4. Patrons shall keep their dogs on a leash at all times and shall keep their dogs under reasonable control.

5. Dogs shall not be allowed on chairs, tables, or other furnishings.

6. All table and chair surfaces shall be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink shall be removed from the floor or ground between seating of patrons.

7. Accidents involving dog waste shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be kept near the designated outdoor area.

8. A sign or signs reminding employees of the applicable rules shall be posted on premises in a manner and place as determined by the local permitting authority.

9. A sign or signs reminding patrons of the applicable rules shall be posted on premises in a manner and place as determined by the local permitting authority.

10. A sign or signs shall be posted in a manner and place as determined by the local permitting authority that places the public on notice that the designated outdoor area is available for the use of patrons and patrons' dogs.

11. Dogs shall not be permitted to travel through indoor or nondesignated outdoor portions of the public food service establishment, and ingress and egress to the designated outdoor portions of the public food service establishment must not require entrance into or passage through any indoor area of the food establishment.

(d) A permit issued pursuant to this section shall not be transferred to a subsequent owner upon the sale of a public food service establishment but shall expire automatically upon the sale of the establishment. The subsequent owner shall be required to reapply for a permit pursuant to this section if the subsequent owner wishes to continue to accommodate patrons' dogs.

(4) POWERS; ENFORCEMENT.--Participating local governments shall have such powers as are reasonably necessary to regulate and enforce the provisions of this section.

(5) STATE AND LOCAL COOPERATION.--The division shall provide reasonable assistance to participating local governments in the development of enforcement procedures and regulations, and participating local governments shall monitor permitholders for compliance in cooperation with the division. At a minimum, participating local governments shall establish a procedure to accept, document, and respond to complaints and to timely report to the division all such complaints and the participating local governments' enforcement responses to such complaints. A participating local government shall provide the division with a copy of all approved applications and permits issued, and the participating local government shall require that all applications, permits, and other related materials contain the appropriate division-issued license number for each public food service establishment.

## 509.241 Licenses required; exceptions.——

(1) LICENSES; ANNUAL RENEWALS. Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14. Licenses shall be renewed annually, and the division shall adopt a rule establishing a staggered schedule for license renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

(2) APPLICATION FOR LICENSE. Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license.

(3) DISPLAY OF LICENSE. Any license issued by the division shall be conspicuously displayed in the office or lobby of the licensed establishment. Public food service establishments which offer catering services shall display their license number on all advertising for catering services.

## 509.242 Public lodging establishments; classifications.——

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(a) Hotel.

A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.

A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, off-street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) Vacation rental.

A vacation rental is any unit or group of units in a condominium, or cooperative, or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

(d) Nontransient apartment.—A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) Transient apartment.—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) Bed and breakfast inn.—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

(g) Timeshare project.—A timeshare project is a timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

(2) If 25 percent or more of the units in any public lodging establishment fall within a classification different from the classification under which the establishment is licensed, such establishment shall obtain a separate license for the classification representing the 25 percent or more units which differ from the classification under which the establishment is licensed.

(3) A public lodging establishment may advertise or display signs which advertise a specific classification, if it has received a license which is applicable to the specific classification and it fulfills the requirements of that classification.

## 509.251 License fees.——

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. . The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(3) The fact that a public food service establishment is operated in conjunction with a public lodging establishment does not relieve the public food service establishment of the requirement that it be separately licensed as a public food service establishment.

(4) The actual costs associated with each epidemiological investigation conducted by the Department of Health and Rehabilitative Services in public food service establishments licensed pursuant to this chapter shall be accounted for and submitted to the division annually. The division shall journal transfer the total of all such amounts from the Hotel and Restaurant Trust Fund to the Department of Health and Rehabilitative Services annually; however, the total amount of such transfer may not exceed an amount equal to 5 percent of the annual public food service establishment licensure fees received by the division.

## 509.261 Revocation or suspension of licenses; fines; procedure.——

(1) Any public lodging establishment or public food service establishment that has operated or is operating in violation of this chapter or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

(a) Fines not to exceed $1,000 per offense;

(b) Mandatory completion, at personal expense, of a remedial educational program administered by a food safety training program provider approved by the division, as provided in s. 509.049; and

(c) The suspension, revocation, or refusal of a license issued pursuant to this chapter.

(2) For the purposes of this section, the division may regard as a separate offense each day or portion of a day on which an establishment is operated in violation of a "critical law or rule," as that term is defined by rule.

(3) The division shall post a prominent closed-for-operation sign on any public lodging establishment or public food service establishment, the license of which has been suspended or revoked. The division shall also post such sign on any establishment judicially or administratively determined to be operating without a license. It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to deface or remove such closed-for-operation sign or for any public lodging establishment or public food service establishment to open for operation without a license or to open for operation while its license is suspended or revoked. The division may impose administrative sanctions for violations of this section.

(4) All funds received by the division as satisfaction for administrative fines shall be paid into the State Treasury to the credit of the Hotel and Restaurant Trust Fund and may not subsequently be used for payment to any entity performing required inspections under contract with the division. Administrative fines may be used to support division programs pursuant to s. 509.302(1).

(5) (a) A license may not be suspended under this section for a period of more than 12 months. At the end of such period of suspension, the establishment may apply for reinstatement or renewal of the license. A public lodging establishment or public food service establishment, the license of which is revoked, may not apply for another license for that location prior to the date on which the revoked license would have expired.

(b) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the operator knowingly lets, leases, or gives space for unlawful gambling purposes or permits unlawful gambling in such establishment or in or upon any premises which are used in connection with, and are under the same charge, control, or management as, such establishment.

(6) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment when:

(a) Any person with a direct financial interest in the licensed establishment, within the preceding 5 years in this state, any other state, or the United States, has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in controlled substances as defined in chapter 893, or any other crime reflecting on professional character.

(b) Such establishment has been deemed an imminent danger to the public health and safety by the division or local health authority for failure to meet sanitation standards or the premises have been determined by the division or local authority to be unsafe or unfit for human occupancy.

(7) A person is not entitled to the issuance of a license for any public lodging establishment or public food service establishment except in the discretion of the director when the division has notified the current licenseholder for such premises that administrative proceedings have been or will be brought against such current licensee for violation of any provision of this chapter or rule of the division.

(8) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment when the estab­lishment is not in compliance with the requirements of a final order or other administrative action issued against the licensee by the division.

(9) The division may refuse to issue or renew the license of any public lodging establishment or public food service establishment until all out­standing fines are paid in full to the division as required by all final orders or other administrative action issued against the licensee by the division.

## 509.271 Prerequisite for issuance of municipal or county occupational license.—

A municipality or county may not issue an occupational license to any business coming under the provisions of this chapter until a license has been procured for such business from the division.

## 509.281 Prosecution for violation; duty of state attorney; penalties.——

(1) The division or an agent of the division, upon ascertaining by inspection that any public lodging establishment or public food service establishment is being operated contrary to the provisions of this chapter, shall make complaint and cause the arrest of the violator, and the state attorney, upon request of the division or agent, shall prepare all necessary papers and conduct the prosecution. The division shall proceed in the courts by mandamus or injunction whenever such proceedings may be necessary to the proper enforcement of the provisions of this chapter, of the rules adopted pursuant hereto, or of orders of the division.

(2) Any operator who obstructs or hinders any agent of the division in the proper discharge of his duties; who fails, neglects, or refuses to obtain a license or pay the license fee required by law; or who fails or refuses to perform any duty imposed upon it by law or rule is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day that such establishment is operated in violation of law or rule is a separate offense.

## 509.285 Enforcement; city and county officers to assist.——

Any state or county attorney, sheriff, police officer, and any other appropriate municipal and county official shall, upon request, assist the division or any of its agents in the enforcement of this chapter.

## 509.291 Advisory council.——

(1) There is created a 10-member advisory council.

(a) The secretary of the Department of Business and Professional Regulation shall appoint six voting members to the advisory council. Each member appointed by the secretary must be an operator of an establishment licensed under this chapter and shall represent the industries regulated by the division, except that one member appointed by the secretary must be a lay person representing the general public and one member must be a hospitality education administrator from an institution of higher education of this state. Such members of the council shall serve staggered terms of 4 years.

(b) The Florida Restaurant and Lodging Association shall designate one representative to serve as a voting member of the council. The Florida Vacation Rental Managers Association shall designate one representative to serve as a voting member of the council. The Florida Apartment Association and the Florida Association of Realtors shall each designate one representative to serve as a voting member of the council.

(c) Any member who fails to attend three consecutive council meetings without good cause may be removed from the council by the secretary.

(2) The purpose of the advisory council is to promote better relations, understanding, and cooperation between such industries and the division; to suggest means of better protecting the health, welfare, and safety of persons using the services offered by such industries; to give the division the benefit of its knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division; to promote and coordinate the development of programs to educate and train personnel for such industries; and to perform such other duties as prescribed by law.

(3) (a) The advisory council shall meet once each January, at which time a chairperson and vice chairperson shall be elected from the members. A member may not serve consecutive terms as a chairperson.

(b) The council shall meet at the request of the division or at the request of a majority of the members. However, the council may not hold more than one meeting in any calendar month.

(c) The council shall take action only by a majority vote of the members in attendance.

(d) The division shall provide necessary staff assistance to the council. All minutes and records of the council shall be maintained by the division and shall be made available to the public upon request.

(4) The members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(5) The secretary and the division shall periodically review with the advisory council the division’s budget and financial status for the purpose of maintaining the financial stability of the division. The council shall make recommendations, when it deems appropriate, to the secretary and the division to ensure that adequate funding levels from fees, penalties, and other costs assessed by the division and paid by the industries it regulates are maintained.

(6) The division shall provide to the advisory council each year an annual internal audit of the financial records of the Hospitality Education Program for the purpose of permitting the advisory council to determine compliance with the provisions of s. 509.072(2).

## 509.292 Misrepresenting food or food product; penalty.——

(1) An operator may not knowingly and willfully misrepresent the identity of any food or food product to any of the patrons of such establishment. The identity of food or a food product is misrepresented if:

(a) The description of the food or food product is false or misleading in any particular;

(b) The food or food product is served, sold, or distributed under the name of another food or food product; or

(c) The food or food product purports to be or is represented as a food or food product that does not conform to a definition of identity and standard of quality if such definition of identity and standard of quality has been established by custom and usage.

(2) If the food or food product is a fruit or fruit juice, its identity is misrepresented if:

(a) The description of the fruit or fruit juice is false or misleading in any particular;

(b) The fruit or fruit juice is served, sold, or distributed under the name of another fruit or fruit juice; or

(c) A synthetic or flavored drink is sold purporting to be fruit juice.

The term "fresh juice" refers to a juice without additives and prepared from the original fruit within 12 hours or less of sale.

(3) Any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

## 509.302 Hospitality Education Program

(1) (a) The division shall administer an educational program, designated the "Hospitality Education Program," offered for the benefit of the hospitality industries of this state. As used in this section, the term “hospitality industry” means the restaurant industry or the lodging industry.

(b) The program may affiliate with Florida State University, Florida International University, and the University of Central Florida. The program may also affiliate with any other member of the State University System or Florida College System, or with any privately funded college or university, which offers a program of hospitality administration and management.

(c) The purpose of the program is to provide, support, and enhance school-to-career training and transition programs for students interested in pursuing careers in the industry.

(d) The training and transition programs shall be funded through grants to one or more nonprofit statewide organizations that represent hospitality industry of this state. The training and transition programs shall be delivered through the public school system using a nationally recognized curriculum approved by the division. The division shall administer the application process for the grants.

(2) (a) All public lodging establishments and all public food service establishments licensed under this chapter shall pay an annual fee of no more than $10 which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

(b) The division shall use at least 68 percent of the funds collected underparagraph (a) for programs directed to careers in the restaurant industry and at least 14 percent of the funds for programs directed to careers in the lodging industry. If the division does not receive a sufficient number of grant applications, which are submitted timely and comply with the division’s requirements, to use all of the funds reserved for programs directed to careers in one of the industries, the division may use the remaining funds for programs directed to careers in the other industry.

(c) The division may use up to 10 percent of the funds collected under paragraph (a) for administration of the program.

(3) Notwithstanding any other provision of law to the contrary, grant funding under this section shall include all expenses related to providing the programs, including the cost of staff support; student scholarships; compensation to program instructors for time spent in relevant training; special events or competitive events; and a reasonable stipend for travel, lodging, and meals for instructors and students participating in training or in related special events. All of an applicant’s expenses must be consistent with the budget submitted by the applicant in the grant application and approved by the division. The expenditure of all funds distributed under this section shall be subject to audit by the division.

(4) The director shall develop an annual budget, programs, and activities to accomplish the purposes of this section, in accordance with and subject to the advice and recommendations of the advisory council.

(a) The annual budget of the Hospitality Education Program must show that the total fees estimated to be collected during the next fiscal year under this section will be dedicated solely to the estimated cost of funding the Hospitality Education Program, less any trust fund service charge imposed by s. 215.20. If the estimated cost of funding the Hospitality Education Program in any fiscal year is less than the total fees estimated to be collected during that year, the director shall submit a report to advisory council demonstrating why the amount of such fee should not be immediately reduced to eliminate the projected surplus. The director shall also submit this report to the Secretary of Business and Professional Regulation as part of the division’s annual budget request.

(b) Both the secretary’s legislative budget requests submitted under ss. 216.023 and 216.031 and the Governor’s recommended budget submitted under s. 216.163 must also show that the total fees estimated to be collected during the next fiscal year under this section will be dedicated solely to funding the Hospitality Education Program, less any trust fund service charge imposed by s. 215.20. If the estimated cost of funding the Hospitality Education Program in any fiscal year is less than the total fees estimated to be collected during that year, the secretary shall submit a report demonstrating why the amount of the fee should not be immediately reduced to eliminate the projected surplus.

(5) The director shall supervise the administration of the programs set forth in this section and shall report the status of the programs at all meetings of the advisory council and at other times prescribed by the advisory council.

(6) The division shall adopt rules providing the criteria for grant approval and the procedures for processing grant applications. The criteria and procedures must be approved by the advisory council. The criteria shall give primary consideration to the experience and history of the applicant in representing a hospitality industry in the state, the applicant’s prior commitment to school-to-career transition programs in the food service or lodging industry, and the applicant’s demonstrated ability to provide services statewide with industry support and participation. Grants awarded under this section shall be for a term of 4 years, with funding provided on an annual basis.

## 509.4005 Applicability of ss. 509.401—509.417.——

Sections 509.401—509.417 apply only to guests in transient occupancy in a public lodging establishment.

## 509.401 Operator's right to lockout.——

(1) If, upon a reasonable determination by an operator of a public lodging establishment, a guest has accumulated a large outstanding account at such establishment, the operator may lock the guest out of the guest's rental unit for the purpose of requiring the guest to confront the operator and arrange for payment on the account. Such arrangement must be in writing, and a copy must be furnished to the guest.

(2) Once the guest has confronted the operator and made arrangements for payment on the account, the operator shall provide the guest with unrestricted access to the guest's rental unit.

(3) The operator shall at all times permit the guest to remove from the rental unit any items of personal property essential to the health of the guest.

## 509.402 Operator's right to recover premises.——

If the guest of a public lodging establishment vacates the premises without notice to the operator and the operator reasonably believes the guest does not intend to satisfy the outstanding account, the operator may recover the premises. Upon recovery of the premises, the operator shall make an itemized inventory of any property belonging to the guest and store such property until a settlement or a final court judgment is obtained on the guest's outstanding account. Such inventory shall be conducted by the operator and at least one other person who is not an agent of the operator.

## 509.403 Operator's writ of distress.——

If, after a lockout has been imposed pursuant to s. 509.401, a guest fails to make agreed-upon payments on an outstanding account, or, notwithstanding s. 509.401, if a guest vacates the premises without making payment on an outstanding account, an operator may proceed to prosecute a writ of distress against the guest and the guest's property. The writ of distress shall be predicated on the lien created by s. 713.67 or s. 713.68.

## 509.404 Writ of distress; venue and jurisdiction.——

The action under s. 509.403 shall be brought in a court of appropriate jurisdiction in the county where the property is located. When property consists of separate articles, the value of any one of which is within the jurisdictional amount of a lower court but which, taken together, exceed that jurisdictional amount, the operator may not divide the property to give jurisdiction to the lower court so as to enable the operator to bring separate actions therefore.

## 509.405 Complaint; requirements.——

To obtain an order authorizing the issuance of a writ of distress upon final judgment, the operator must first file with the clerk of the court a complaint reciting and showing the following information:

(1) A statement as to the amount of the guest's account at the public lodging establishment.

(2) A statement that the plaintiff is the operator of the public lodging establishment in which the guest has an outstanding account. If the operator's interest in such account is based on written documents, a copy of such documents shall be attached to the complaint.

(3) A statement that the operator has reasonably attempted to obtain payment from the guest for an outstanding account, either by confronting the guest or by a lockout pursuant to s. 509.401, and that the guest has failed to make any payment or that the guest has vacated the premises without paying the outstanding account.

(4) A statement that the account is outstanding and unpaid by the guest; a statement of the services provided to the guest for which the outstanding account was accumulated; and the cause of such nonpayment according to the best knowledge, information, and belief of the operator.

(5) A statement as to what property the operator is requesting levy against, including the inventory conducted as prescribed by s. 509.402 if the operator has recovered the premises, and the authority under which the operator has a lien against such property.

(6) A statement, to the best of the operator's knowledge, that the claimed property has not been taken for a tax, assessment, or fine pursuant to law or taken under an execution or attachment by order of any court.

## 509.406 Prejudgment writ of distress.——

(1) A prejudgment writ of distress may issue and the property seized may be delivered forthwith to the plaintiff when the nature of the claim, the amount thereof, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the verified petition or by separate affidavit of the plaintiff.

(2) The prejudgment writ of distress may issue if the court finds, pursuant to subsection (1), that the defendant is engaging in, or is about to engage in, conduct that may place the claimed property in danger of destruction, concealment, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action and that the defendant has failed to make payment as agreed.

(3) The plaintiff shall post bond in the amount of twice the estimated value of the goods subject to the writ or twice the balance of the outstanding account, whichever is the lesser as determined by the court, as security for the payment of damages the defendant may sustain if the writ is wrongfully obtained.

(4) The defendant may obtain release of the property seized under a prejudgment writ of distress by posting bond with surety within 10 days after service of the writ, in the amount of one and one-fourth the claimed outstanding account, for the satisfaction of any judgment which may be rendered against the defendant, conditioned upon delivery of the property if the judgment should require it.

(5) A prejudgment writ of distress shall issue only upon a signed order of a circuit court judge or a county court judge. The prejudgment writ of distress shall include a notice of the defendant's right to immediate hearing before the court issuing the writ.

(6) As an alternative to the procedure prescribed in subsection (4), the defendant, by motion filed with the court within 10 days after service of the writ, may obtain the dissolution of a

prejudgment writ of distress, unless the plaintiff proves the grounds upon which the writ was issued. The court shall set such motion for an immediate hearing.

## 509.407 Writ of distress; levy of writ.——

The officer of the court to whom a final judgment writ of distress is directed shall execute the writ of distress by service on defendant and by levy on property distrainable for services rendered, if found within the area of the officer's jurisdiction. If the property is not so found but is in another jurisdiction, the officer shall deliver the writ to the proper authority in the other jurisdiction. The writ shall be executed by levying on such property and delivering it to the officer of the court in which the action is pending, to be disposed of according to law, unless the officer is ordered by such court to hold the property and dispose of it according to law. If the defendant cannot be found, the levy on the property suffices as service if the plaintiff and the officer each file a sworn statement stating that the whereabouts of the defendant are unknown.

## 509.408 Prejudgment writ; form; return.——

The prejudgment writ issued under s. 509.406 shall command the officer to whom it may be directed to distrain the described personal property of defendant and hold such property until final judgment is rendered.

## 509.409 Writ; inventory.——

When the officer seizes distrainable property, either under s. 509.407 or s. 509.408, and such property is seized on the premises of a public lodging establishment, the officer shall inventory the property, hold those items which, upon appraisal, would appear to satisfy the plaintiff's claim, and return the remaining items to the defendant. If the defendant cannot be found, the officer shall hold all items of property. The officer shall release the property only pursuant to law or a court order.

## 509.411 Exemptions from writ of distress.——

The following property of a guest is exempt from distress and sale under this chapter:

(1) From final distress and sale: clothing and items essential to the health and safety of the guest.

(2) From prejudgment writ of distress: clothing, items essential to the health and safety of the guest, and any tools of the guest's trade or profession, business papers, or other items directly related to such trade or profession.

## 509.412 Writ; claims by third persons.——

Any third person claiming any property distrained pursuant to this chapter may interpose and prosecute a claim for the property in the same manner as is provided in similar cases of claim to property levied on under execution.

## 509.413 Judgment for plaintiff when goods not delivered to defendant.——

If it appears that the account stated in the complaint is wrongfully unpaid and the property described in such complaint is the defendant's and was held by the officer executing the prejudgment writ, the plaintiff shall have judgment for damages sustained by the plaintiff,

which may include reasonable attorney fees and costs, by taking title to the defendant's property in the officer's possession or by having the property sold as prescribed in s. 509.417.

## 509.414 Judgment for plaintiff when goods retained by or redelivered to defendant.—

(1) If it appears that the property was retained by, or redelivered to, the defendant on the defendant's forthcoming bond, either under s. 509.406(4) or (6), the plaintiff shall take judgment for the property, which may include reasonable attorney fees and costs, and against the defendant and the surety on the forthcoming bond for the value of the outstanding account, and the judgment, which may include reasonable attorney fees and costs, shall be satisfied by the recovery and sale of the property or the amount adjudged against the defendant and the defendant's surety.

(2) After the judgment is rendered, the plaintiff may seek a writ of possession for the property and execution for the plaintiff's costs or have execution against the defendant and the defendant's surety for the amount recovered and costs. If the plaintiff elects to have a writ of possession for the property and the officer is unable to find the property, the plaintiff may immediately have execution against the defendant and the defendant's surety for the whole amount recovered less the value of any property found by the officer. If the plaintiff has execution for the whole amount, the officer shall release all property taken under the writ of possession.

(3) In any proceeding to ascertain the value of the property so that judgment for the value may be entered, the value of each article shall be found.

## 509.415 Judgment for defendant when goods are retained by or redelivered to the defendant.——

When property has been retained by, or redelivered to, the defendant on the defendant's forthcoming bond or upon the dissolution of a prejudgment writ and the defendant prevails, the defendant shall have judgment against the plaintiff for any damages due for the taking of the property, which may include reasonable attorney fees and costs. The remedies provided in this section and s. 509.416 do not preclude any other remedies available under the laws of this state.

## 509.416 Judgment for defendant when goods are not retained by or redelivered to the defendant.——

If the property has not been retained by, or redelivered to, the defendant and the defendant prevails, judgment shall be entered against the plaintiff for possession of the property. Such judgment may include reasonable attorney fees and costs. The remedies provided in s. 509.415 and this section do not preclude any other remedies available under the laws of this state.

## 509.417 Writ; sale of property distrained.——

(1) If the judgment is for the plaintiff, the property in whole or in part shall, at the plaintiff's option pursuant to s. 509.413 or s. 509.414, be sold and the proceeds applied on the payment of the judgment.

(2) At the time any property levied on is sold, it must be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on may be sold on the premises of the public lodging establishment or at the courthouse door.

(3) If the defendant appeals and obtains a writ of supersedes before sale of the property has occurred, the property shall be held by the officer executing the writ, and there may not be a sale or disposition of the property until final judgment is had on appeal.

# Part II Membership Campgrounds

## 509.501 Short title.——

This act may be cited as the "Florida Membership Campground Act."

## 509.502 Definitions.——

As used in this act:

(1) "Advertising" means any written, oral, printed, or visual communication by an offeror made in connection with the promotion of a membership camping plan.

(2) "Business day" means a calendar day other than a Saturday, Sunday, or national holiday.

(3) "Campground" means any real property which is a part of a membership camping plan. This term does not include a mobile home, lodging, or recreational vehicle park or recreational camp as defined in chapter 513 so long as no membership camping plan is offered for sale, sold, or otherwise promoted with regard to such park.

(4) "Camping site" means any portion of a campground designed or promoted for the purpose of camping, including any trailer, tent, tent trailer, pickup camper, cabin, or other similar device or accommodation used for camping and located upon such site.

(5) "Dues payment" means the mandatory annual or periodic fee paid by a purchaser, other than the purchase price, as set forth in the membership camping contract. This term does not include optional user fees charged for specific goods or services such as campground recreation or rental fees, equipment or accommodation rentals, or meals.

(6) "Facilities" means all amenities offered in connection with a campground, including, but not limited to, camping sites, available rental trailers or cabins, if any, swimming pools, sport courts, recreation buildings, and trading posts or grocery stores.

(7) "Membership camping contract" means an agreement evidencing a purchaser's right to use campgrounds and facilities pursuant to a membership camping plan.

(8) "Membership camping plan" means any arrangement or other device, membership agreement, rental agreement, license, right-to-use agreement, or other agreement under which a purchaser, in exchange for consideration, receives the right to use campgrounds and facilities. This term does not include any arrangement or other device, membership agreement, rental agreement, license, right-to-use agreement, or other agreement under which a purchaser has the one-time right to use a specific, identified camping site and related facilities for a specific, identified, nonrecurring period of time.

(9) "Offer" means any solicitation, advertisement, inducement, or other method or attempt to encourage any person to become a purchaser.

(10) "Offeror" means the person who creates a membership camping plan and offers membership camping contracts for sale to the public in the ordinary course of business in connection with the membership camping plan.

(11) "Ordinary course of business" means the transaction of business by a person in the business of selling or reselling membership camping plans.

(12) "Purchase price" means the total price of a membership camping contract, including finance charges and related closing costs, if any, and excluding all dues payments.

(13) "Purchaser" means a person who purchases a membership camping contract and obtains the right to use the campgrounds and facilities of a membership camping plan.

(14) "Salesperson" means a person who is engaged in promoting, offering for sale, or selling a membership camping plan as the employee, independent contractor, agent, officer, director, shareholder, partner, or principal of an offeror. This term does not include an offeror or a tour generator and does not include a purchaser who refers names of prospective purchasers to an offeror, provided that such purchaser is not in the business of making such referrals.

(15) "Tour generator" means a person who is engaged in the referral of prospective purchasers of a membership camping plan to a salesperson or to an offeror. This term does not include an offeror and does not include a purchaser who refers names of prospective purchasers to an offeror, provided that such purchaser is not in the business of making such referrals.

(16) "Trust account" means an account created and used for the purposes required in this act.

(17) "Trustee" includes only:

(a) A savings and loan association, bank, trust company, or other financial lending institution having a net worth in excess of $5 million which is either located in this state or which has submitted to the jurisdiction of the circuit court of Leon County, Florida, and is otherwise acceptable; or

(b) An attorney who is a member in good standing of The Florida Bar and who has posted a fidelity bond in the amount of $50,000 issued by a company authorized and licensed to do business in this state as surety.

## 509.503 Membership camping contracts.——

Each offeror of a membership camping plan must use and must furnish each purchaser with a fully completed copy of a contract incorporating the following information:

(1) The actual date the contract is executed by the offeror and the purchaser;

(2) The name and address of the offeror;

(3) The name and address of the trustee;

(4) A complete description of the purchase price;

(5) The expiration date of the contract and the terms and conditions of its extension or renewal, if applicable;

(6) The disclosure required by s. 509.504; and

(7) The disclosures required by s. 509.505.

## 509.504 Cancellation.——

(1) A purchaser has the right to cancel his contract within the time period and in the manner described in paragraph (a) and to receive a refund of all sums paid to the offeror within the time period and in the manner described in paragraph (b). Any attempt by an offeror, tour generator, or salesperson to misrepresent this absolute right to cancel to a purchaser is a violation of this act.

(a) The following capitalized language must appear in at least 10—point type in close proximity to the purchaser's signature line on the contract: "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION UNTIL MIDNIGHT OF THE 5TH DAY AFTER THE DATE YOU SIGN THIS CONTRACT, UNLESS THE 5TH DAY FALLS ON A SUNDAY OR NATIONAL HOLIDAY, IN WHICH EVENT, YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION UNTIL MIDNIGHT ON THE FIRST BUSINESS DAY FOLLOWING SUCH SUNDAY OR NATIONAL HOLIDAY. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE TRUSTEE IN WRITING OF YOUR CANCELLATION. YOUR CANCELLATION SHALL BE EFFECTIVE UPON THE DATE POSTMARKED AND SHALL BE MAILED TO (Name of Trustee) AT (Address of Trustee). ANY ATTEMPT TO MISREPRESENT YOUR ABSOLUTE CANCELLATION RIGHT IS UNLAWFUL."

(b) The contract shall also include the following statement: "Within 20 days after the trustee receives your written cancellation, the trustee shall refund to you the total amount of all payments which you have made under the contract, provided that such refunds may be made either by check or, if you used a credit card, by credit to your credit card account."

(2) The following capitalized language must appear in at least 10—point type in close proximity to the purchaser's signature line on the contract: "YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE CAMPGROUNDS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT."

(3) The offeror shall maintain among its business records a copy of each executed contract for a period of at least 3 years after the date of entering into the contract.

## 509.505 Required disclosures.——

(1) The offeror of a membership camping plan shall include the following disclosures within each membership camping contract:

(a) The following capitalized statement in at least 10—point type: "THESE DISCLOSURES CONTAIN IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CAMPGROUND MEMBERSHIP. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REVIEW THESE MATTERS CAREFULLY AND SHOULD NOT RELY UPON ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THESE DISCLOSURES FOR CORRECT REPRESENTATIONS. THE OFFEROR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS CONTRADICTORY TO THOSE CONTAINED IN THE CONTRACT AND EXHIBITS THERETO."

(b) A summary of the offeror's experience in the business of developing and marketing membership camping plans.

(c) A summary of the nature and duration of the purchaser's use rights in the campgrounds and facilities included in the membership camping plan.

(d) A description of any mandatory dues payments which shall be payable to the offeror by the purchaser during the term of the contract, including a description of any limitation upon the offeror's ability, if any, to increase the dues payments from time to time. If there are no limitations upon the offeror's ability to increase the dues payments, the following capitalized statement must appear in at least 10—point type: "IN ADDITION TO THE PURCHASE PRICE, YOU MUST MAKE PERIODIC DUES PAYMENTS MORE SPECIFICALLY DESCRIBED HEREIN WHICH MAY BE INCREASED FROM TIME TO TIME WITHOUT LIMITATION."

(e) A description of any optional user fees which may be imposed upon the purchaser by the offeror, including a description of any limitation upon the offeror's ability to increase the various user fees from time to time.

(f) A summary of the description of the campgrounds in the membership camping plan, including a summary description or grid outline of the type and number of camping sites and facilities presently constructed at such campgrounds and a separate summary description or grid outline of the type and number of camping sites and facilities planned but not yet constructed at such campgrounds. The summary description or grid outline must also include any specific goods or services for which an optional user fee may be charged.

(g) A description of the rights of any nonmembers of the membership camping plan to use the campgrounds and facilities of the membership camping plan.

(h) A description of the offeror's right to change or withdraw from use all or a portion of the campgrounds and facilities of the membership camping plan and the extent to which the offeror is obligated to replace any campgrounds or facilities withdrawn.

(i) A summary of the rules, restrictions, or covenants governing or regulating the purchaser's use of the campgrounds and facilities of the membership camping plan, including a description of the offeror's right to amend such rules, restrictions, or covenants.

(j) A description of any restrictions upon the transfer by the purchaser of the purchaser's membership in the membership camping plan.

(k) Such other information as is necessary to disclose fully and fairly all aspects of the membership camping plan.

(2) In lieu of the disclosure required by paragraph (1)(i), the offer or may furnish to each purchaser a complete copy of the rules, restrictions, or covenants described in that paragraph at the time of execution of the contract by the purchaser.

## 509.506 Trust accounts.——

(1) All funds or other properties received from or on behalf of a purchaser in connection with the execution of the membership camping contract shall be deposited by the offeror within 3 days after receipt by the offeror or a salesperson into a trust account with a financial institution located in this state, established by a trustee solely for the purpose of refunds. The funds or other properties shall be maintained in the trust account until 5 days after the purchaser's cancellation period has expired. If the purchaser delivers a written cancellation of the purchaser's contract to the trustee within the time period described in s. 509.504(1)(a), the purchaser's funds or other properties shall be refunded by the trustee pursuant to s. 509.504(1)(b). If the purchaser does not timely cancel the contract in the required manner, all funds or other properties received from the purchaser may be released by the trustee to the offeror on the 6th day after the expiration of the cancellation period. If the trustee receives conflicting demands for any funds or other properties held in the trust account, the trustee shall immediately either submit the matter to arbitration with the consent of the parties or, by interpleader or otherwise, seek an adjudication of the matter by a court of competent jurisdiction.

(2) All trustees shall be independent of the offeror, and neither the offeror nor any officer, director, affiliate, subsidiary, or employee of the offeror may serve as trustee; however, an attorney who represents an offeror but who is not an officer, director, or employee of the offeror may serve as trustee for the offeror.

(3) The moneys held in trust pursuant to subsection (1) may be invested only in securities of the United States Government or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States Government. The interest generated by the investments, if any, shall be paid to the party to whom the escrowed moneys are paid unless otherwise specified in the contract.

(4) Any offeror, trustee, or other person who intentionally fails to comply with the provisions of this section concerning the establishment of a trust account and the deposit and disbursement of funds and other properties received from a purchaser is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The proof of failure to establish a trust account or to deposit funds therein as required by this section constitutes prima facie proof of the intent required by this subsection.

## 509.507 Advertising; disclosures; unlawful acts.——

(1) Advertising by an offeror, salesperson, or tour generator may not:

(a) Misrepresent a material fact or create a false or misleading impression regarding the membership camping plan.

(b) Make a prediction of specific or immediate increases in the price or value of membership camping contracts unless the increases are in fact planned by the offeror.

(c) Contain a statement concerning future price increases by the offeror which are nonspecific or not bona fide.

(d) Contain an asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact.

(e) Describe a planned facility that is not yet constructed unless the planned facility is conspicuously identified as proposed or under construction.

(f) Misrepresent the size, nature, extent, qualities, or characteristics of any campground or facilities.

(g) Misrepresent the amount or period of time during which any campgrounds or facilities will be available to any purchaser.

(h) Misrepresent the nature or extent of any services incident to the membership camping plan.

(i) Make a misleading or deceptive representation with respect to the content of the contract or the rights, privileges, benefits, or obligations of the purchaser under the contract or this act.

(j) Misrepresent the conditions under which a purchaser may use campgrounds and facilities.

(k) Misrepresent the availability of a resale or rental program offered by or on behalf of the offeror.

(l) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity or time limit applicable to the offer or inducement is clearly stated.

(m) Imply that a facility is available for the exclusive use of purchasers if the facility will actually be shared by others or by the general public.

(n) Purport to have resulted from a referral unless the name of the person making the referral can be produced upon demand.

(o) Misrepresent the source of the advertising by leading a prospective purchaser to believe that the advertising is mailed by a governmental agency, credit bureau, bank, or attorney, if that is not the case.

(p) Misrepresent the value of any prize, gift, or other item to be awarded in connection with any prize and gift promotional offer.

(2) Written advertising may not be disseminated within this state unless it bears the following disclosure: "THIS ADVERTISING IS BEING USED FOR THE PURPOSE OF SOLICITING SALES OF RESORT CAMPGROUND MEMBERSHIPS." The disclosure shall be conspicuous and shall in no event appear in less than 10—point type, unless the advertising is a postcard, in which case the disclosure shall be in bold type and at least as large as the main body type. This subsection does not apply to signs, billboards, and other similar advertising which is affixed to real or personal property and which is disseminated only by visual means.

## 509.508 Prize and gift promotional offers.——

(1) As used in this section, the term "prize and gift promotional offer" means any advertising material wherein a prospective purchaser may receive goods or services other than the membership camping plan itself, either free of charge or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate.

(2) A game promotion, contest of chance, or sweepstakes in which the elements of chance and prize are present may not be used by an offeror in connection with the offering for sale of membership camping plans.

(3) If a prospective purchaser meets all eligibility requirements stated in a prize and gift promotional offer, a prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it, whether or not he executes a membership camping contract.

(4) The offeror shall maintain among its records for the period of 1 year following the completion of each prize and gift promotional offer the following information with regard to each prize and gift promotional offer:

(a) A copy of all advertising material used in connection with the prize and gift promotional offer;

(b) The name, address, and telephone number, including area code, of the supplier or manufacturer from whom each type or variety of prize, gift, or other item is obtained;

(c) The manufacturer's model number or other description of such item; and

(d) The information on which the developer relies in determining the verifiable retail value of the prize or gift.

## 509.509 Purchasers' remedies.——

An action for damages or injunctive or declaratory relief for a violation of this act may be brought by any purchaser against an offeror, a trustee, a salesperson, or a tour generator. The prevailing party in the action may recover reasonable attorney fees and costs from the losing party. Relief under this section does not exclude other remedies provided by law.

## 509.510 Violation of the Florida Membership Campground Act; exception.—

A person who willfully violates a provision of this act other than the provisions of s. 509.506 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

## 509.511 Violation; Deceptive and Unfair Trade Practices Act.—

A violation of this act is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.

## 509.512 Time-share plan developer and exchange company exemption.——

Sections 509.501—509.511 do not apply to a developer of a time-share plan or an exchange company approved by the Division of Florida , Condominiums, Timeshares and Mobile Homes pursuant to chapter 721, but only to the extent that the developer or exchange company engages in conduct regulated under chapter 721.

# Public Swimming and Bathing Facilities

[**514.011 Definitions.--As used in this chapter:**](#_Toc333939095)

[**514.011 Definitions.--As used in this chapter:**](#_Toc333939096)

[**514.0115 Exemptions from supervision or regulation; variances.--**](#_Toc333939097)

[**514.021 Department authorization.--**](#_Toc333939098)

[**514.023 Sampling of beach waters; health advisories.--**](#_Toc333939099)

[**514.0231 Advisory committee to oversee sampling of beach waters.—**](#_Toc333939100)

[**514.025 Assignment of authority to county health departments.--**](#_Toc333939101)

[**514.028 Advisory review board.--**](#_Toc333939102)

[**514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—**](#_Toc333939103)

[**514.031 Permit necessary to operate public swimming pool.--**](#_Toc333939104)

[**514.033 Creation of fee schedules authorized.--**](#_Toc333939105)

[**514.0315 Required safety features for public swimming pools and spas.**](#_Toc333939106)

[**514.04 Right of entry.—**](#_Toc333939107)

[**514.05 Denial, suspension, or revocation of permit; administrative fines.--**](#_Toc333939108)

[**514.06 Injunction to restrain violations.—**](#_Toc333939109)

[**514.071 Certification of swimming instructors and lifeguards required.--**](#_Toc333939110)

[**514.072 Certification of swimming instructors for people who have developmental disabilities required.—**](#_Toc333939111)

[**514.075 Public pool service technician; certification.—**](#_Toc333939112)

## 514.011 Definitions.--As used in this chapter:

[(See Also: Chapter 64E-9, Florida Administrative Code)](#_PUBLIC_SWIMMING_POOLS_1)

(1) "Department" means the Department of Health.

(2) "Public swimming pool" or "public pool" means a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

(3) "Private pool" means a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units.

(4) “Public bathing place” means a body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.

(5) "Portable pool" means a pool or spa, and related equipment systems of any kind, which is designed or intended to be movable from location to location.

(6) “Temporary pool” means a pool intended to be used in conjunction with a sanctioned national or international swimming or diving competition event that does not exceed 30 consecutive days of use.

## 514.0115 Exemptions from supervision or regulation; variances.--

(1) Private pools and water therapy facilities connected with facilities connected with hospitals, medical doctors' offices, and licensed physical therapy establishments shall be exempt from supervision under this chapter.

(2) (a) Pools serving no more than 32 condominium or cooperative units which are not operated as a public lodging establishment shall be exempt from supervision under this chapter, except for water quality.

(b) Pools serving condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days are exempt from supervision under this chapter, except that the condominium or cooperative owner or association must file applications with the department and obtain construction plans approval and receive an initial operating permit. The department shall inspect the swimming pools at such places annually, at the fee set forth in s. 514.033(3), or upon request by a unit owner, to determine compliance with department rules relating to water quality and lifesaving equipment. The department may not require compliance with rules relating to swimming pool lifeguard standards.

(3) A private pool used for instructional purposes in swimming shall not be regulated as a public pool.

(4) Any pool serving a residential child care agency registered and exempt from licensure pursuant to s. 409.176 shall be exempt from supervision or regulation under this chapter related to construction standards if the pool is used exclusively by the facility's residents and if admission may not be gained by the public.

(5) A portable pool used exclusively for providing swimming lessons or related instruction in support of an established educational program sponsored or provided by a school district may not be regulated as a public pool.

(6) A temporary pool may not be regulated as a public pool.

(7) Until such time as the department adopts rules for the supervision and regulation of surf pools, a surf pool that is larger than 4 acres is exempt from supervision under this chapter if the surf pool is permitted by a local government pursuant to a special use permit process in which the local government asserts regulatory authority over the construction of the surf pool and, in consultation with the department, establishes through the local government’s special use permitting process the conditions for the surf pool’s operation, water quality, and necessary lifesaving equipment. This subsection does not affect the department’s or a county health department’s right of entry pursuant to s. 514.04 or its authority to seek an injunction pursuant to s. 514.06 to restrain the operation of a surf pool permitted and operated under this subsection if the surf pool presents significant risks to public health. For the purposes of this subsection, the term “surf pool” means a pool that is designed to generate waves dedicated to the activity of surfing on a surfboard or an analogous surfing device commonly used in the ocean and intended for sport, as opposed to the general play intent of wave pools, other large-scale public swimming pools, or other public bathing places.

(8) The department may grant variances from any rule adopted under this chapter pursuant to procedures adopted by department rule. The department may also grant, pursuant to procedures adopted by department rule, variances from the provisions of the Florida Building Code specifically pertaining to public swimming pools and bathing places when requested by the pool owner or the pool owner’s representative to relieve hardship in cases involving deviations from the Florida Building Code provisions, when it is shown that the hardship was not caused intentionally by the action of the applicant, where no reasonable alternative exists, and the health and safety of the pool patrons is not at risk.

## 514.021 Department authorization.--

(1) The department may adopt and enforce rules to protect the health, safety, or welfare of persons by setting sanitation and safety standards for public swimming pools and public bathing places. The department shall review and revise such rules as necessary, but not less than biennially. Sanitation and safety standards shall be limited to matters relating to source of water supply; microbiological, chemical, and physical quality of water in the pool or bathing area; method of water purification, treatment, and disinfection; lifesaving apparatus; and measures to ensure safety of bathers.

(2) The department may not establish by rule any regulation governing the design, alteration, modification, or repair of public swimming pools and bathing places which has no impact on sanitation and safety of persons using public swimming pools and bathing places. Further, the department may not adopt by rule any regulation governing the construction, erection, or demolition of public swimming pools and bathing places. It is the intent of the Legislature to preempt those functions to the Florida Building Commission through adoption and maintenance of the Florida Building Code. The department shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which govern public swimming pools. This subsection does not abrogate the authority of the department to adopt and enforce appropriate sanitary regulations and requirements as authorized in subsection (1).

## 514.023 Sampling of beach waters; health advisories.--

(1) As used in this section, the term “beach waters” means the waters along the coastal and intracoastal beaches and shores of the state, and includes salt water and brackish water.

(2) The department may adopt and enforce rules to protect the health, safety, and welfare of persons using the beach waters and public bathing places of the state. The rules must establish health standards and prescribe procedures and timeframes for bacteriological sampling of beach waters and public bathing places.

(3) The department may issue health advisories if the quality of beach waters or a public bathing place fails to meet standards established by the department. The issuance of health advisories related to the results of bacteriological sampling of beach waters is preempted to the state.

(4) When the department issues a health advisory against swimming in beach waters or a public bathing place on the basis of finding elevated levels of fecal coliform, Escherichia coli, or enterococci bacteria in a water sample, the department shall concurrently notify the municipality or county in which the affected beach waters are located, whichever has jurisdiction, and the local office of the Department of Environmental Protection, of the advisory. The local office of the Department of Environmental Protection shall promptly investigate wastewater treatment facilities within 1 mile of the affected beach waters or public bathing place to determine if a facility experienced an incident that may have contributed to the contamination and provide the results of the investigation in writing or by electronic means to the municipality or county, as applicable.

## 514.0231 Advisory committee to oversee sampling of beach waters.—

The Department of Health shall form an interagency technical advisory committee to oversee the performance of the study required in s. 514.023 and to advise it in rulemaking pertaining to standards for public bathing places along the coastal and intracoastal beaches and shores of the state. Membership on the committee shall consist of equal numbers of staff of the Department of Health and the Department of Environmental Protection with expertise in the subject matter of the study. Members shall be appointed by the State Surgeon General and the Secretary of Environmental Protection. The committee shall be chaired by a representative from the Department of Health.

## 514.025 Assignment of authority to county health departments.--

(1) The department shall assign to county health departments that are staffed with qualified engineering personnel the functions of reviewing applications and plans for the construction, development, or modification of public swimming pools or bathing places; of conducting inspections; and of issuing all permits. If the county health department determines that qualified staff are not available, the department shall be responsible for such functions.

(2) County health departments are responsible for routine surveillance of water quality in all public swimming pools and bathing places, including routine inspections, complaint investigations, enforcement procedures, and operating permits.

(3) The department may assign the responsibilities and functions specified in this section to any multicounty independent special district created by the Legislature to perform multiple functions, to include municipal services and improvements, to the same extent and under the same conditions as provided in subsections (1) and (2), upon request of the special district.

## 514.028 Advisory review board.--

(1) The Governor shall appoint an advisory review board which shall meet as necessary or at least quarterly, to recommend agency action on variance request, rule and policy development, and other technical review problems. The board shall be comprised of:

(a) A representative from the office of licensure and certification of the department.

(b) A representative from the county health departments.

(c) Three representatives from the swimming pool construction industry.

(d) A representative from the public lodging industry.

(e) A representative from a county or local building department.

(2) The purpose of the advisory review board is to promote better relations, understanding, and cooperation between such industries and the department; to review and make recommendations regarding department product approval standards; to suggest means of better protecting the health, welfare, or safety of persons using the services offered by such industries; and to give the department the benefit of the knowledge and experience of the board concerning the industries and individual businesses affected by the laws and rules administered by the department.

(3) Members shall be reimbursed for travel expenses incurred in connection with service on the advisory review board pursuant to s. 112.061.

## 514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—

Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

(1) A person or public body desiring to construct, develop, or modify a public swimming pool must submit an application, containing the information required under s. 514.031(1)(a)1.-6. to the department for an operating permit before filing an application for a building permit under s. 553.79. A copy of the final inspection required under s. 514.031(1)(a)5. Shall be submitted to the department upon receipt by the applicant. The application shall be deemed incomplete pursuant to s. 120.60 until such copy is submitted to the department.

(2) Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

## 514.031 Permit necessary to operate public swimming pool.--

(1) It is unlawful for any person or public body to operate or continue to operate any public swimming pool without a valid permit from the department, such permit to be obtained in the following manner:

(a) Any person or public body desiring to operate any public swimming pool or bathing place shall file an application for an operating permit with the department, on application forms provided by the department, and shall accompany such application with:

1. A description of the structure, its appurtenances, and its operation.
2. A description of the source or sources of water supply, and the amount and quality of water available and intended to be used.
3. The method and manner of water purification, treatment, disinfection, and heating.
4. The safety equipment and standards to be used.
5. A copy of the final inspection from the local enforcement agency as defined in s. 553.71.
6. Any other pertinent information deemed necessary by the department

(b) The applicant shall respond to a request for additional information due to an incomplete application for an operating permit pursuant to s. 120.60. Upon receipt of an application, whether complete or incomplete, as required in s. 514.03 and as set forth under this section, the department shall review and provide to the local enforcement agency and the applicant any comment or proposed modifications on the information received pursuant to subparagraphs (a)1.-6.

(c) If the department determines that the public swimming pool does not meet the provisions outlined in this chapter or the rules adopted hereunder, the department shall deny the application for a permit pursuant to the provisions of chapter 120. Such denial shall be in writing and shall list the circumstances for the denial. Upon correction of such circumstances, an applicant previously denied permission to operate a public swimming pool or bathing place may reapply for a permit.

(2) Operating permits shall not be required for coastal or intracoastal beaches.

(3) Operating permits may be transferred from one name or owner to another. When the ownership or name of an existing public swimming pool is changed and such establishment is operating at the time of the change with a valid permit from the department, the new owner of the establishment shall apply to the department, upon forms provided by the department, within 30 days after such a change.

(4) Each such operating permit shall be renewed annually and the permit must be posted in a conspicuous place.

(5) An owner or operator of a public swimming pool, including, but not limited to, a spa, wading, or special purpose pool, to which admittance is obtained by membership for a fee shall post in a prominent location within the facility the most recent pool inspection report issued by the department pertaining to the health and safety conditions of such facility. The report shall be legible and readily accessible to members or potential members. The department shall adopt rules to enforce this subsection. A portable pool may not be used as a public pool unless it is exempt under s. 514.0115.

## 514.033 Creation of fee schedules authorized.--

(1) The department is authorized to establish a schedule of fees to be charged by the department or by any authorized county health department as detailed in s. 514.025. Fees assessed under this chapter shall be in an amount sufficient to meet the cost of carrying out the provisions of this chapter.

(2) The fee schedule shall be: for original construction or development plan approval, not less than $275 and not more than $500; for modification of original construction, not less than $100 and not more than $150; for an initial operating permit, not less than $125 and not more than $250; and for review of variance applications, not less than $240 and not more than $400. The department shall assess the minimum fees provided in this subsection until a fee schedule is promulgated by rule of the department.

(3) Fees shall be based on pool aggregate gallonage, which shall be: up to and including 25,000 gallons, not less than $75 and not more than $125; and in excess of 25,000 gallons, not less than $160 and not more than $265, except for a pool inspected pursuant to s. 514.0115(2)(b) for which the annual fee shall be $50.

(4) Fees collected by the department in accordance with this chapter shall be deposited into the Grants and Donations Trust Fund or the County Health Department Trust Fund. Any fee collected under this chapter is nonrefundable.

(5) The department may not charge any fees for services provided under this chapter other than those fees authorized in this section. However, the department shall prorate the initial annual fee for an operating permit on a half-year basis.

## 514.0315 Required safety features for public swimming pools and spas.

(1) A public swimming pool or spa must be equipped with an anti-entrapment system or device that complies with American Society of Mechanical Engineers/American National Standards Institute standard A112.19.8, or any successor standard.

(2) A public swimming pool or spa built before January 1, 1993, with a single main drain other than an unblockable drain must be equipped with at least one of the following features that complies with any American Society of Mechanical Engineers, American National Standards Institute, American Society for Testing and Materials, or other applicable consumer product safety standard for such system or device and protects against evisceration and body-and-limb suction entrapment:

(a) A safety vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected and that has been tested by an independent third party and found to conform to American Standard of Mechanical Engineers/American National Standards Institute standard A112.19.17, American Standard for Testing and Materials standard F2387, or any successor standard.

(b) A suction-limiting vent system with a tamper-resistant atmospheric opening.

(c) A gravity drainage system that uses a collector tank.

(d) An automatic pump shut-off system.

(e) A device or system that disables the drain.

(3) The determination and selection of a feature under subsection (2) for a public swimming pool or spa constructed before January 1, 1993, is at the sole discretion of the owner or operator of the public swimming pool or spa. A licensed contractor described in s. 489.105(3)(j),(k), or (1) must install the feature.

## 514.04 Right of entry.—

For the purpose of this chapter, department personnel at any reasonable time may enter upon any and all parts of the premises of such public swimming pools and bathing places to make an examination and investigation to determine the sanitary and safety conditions of such places.

## 514.05 Denial, suspension, or revocation of permit; administrative fines.--

(1) The department may deny an application for a permit, suspend or revoke a permit issued to any person or public body, or impose an administrative fine upon the failure of such person or public body to comply with the provisions of this chapter or the rules adopted hereunder.

(2) The department may impose an administrative fine, which shall not exceed $500 for each violation, for the violation of this chapter or the rules adopted hereunder and for the violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

(3) In determining the amount of fine to be imposed, if any, for a violation, the following factors shall be considered:

(a) The gravity of the violation and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the operator to correct violations.

(c) Any previous violations.

(4) All amounts collected pursuant to this section shall be deposited into the Grants and Donations Trust Fund or into the County Health Department Trust Fund, whichever is applicable.

(5) Under conditions specified by rule, the department may close a public pool that is not in compliance with this chapter or the rules adopted under this chapter.

## 514.06 Injunction to restrain violations.—

Any public swimming pool or public bathing place presenting a significant risk to public health by failing to meet sanitation and safety standards established pursuant to this chapter is declared to be a public nuisance, dangerous to health or safety. Such nuisances may be abated or enjoined in an action brought by the county health department or the department.

## 514.071 Certification of swimming instructors and lifeguards required.--

(1) Any person working as a swimming instructor or lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs. Swimming instructors must be currently certified in swimming instruction, first aid, and cardiopulmonary resuscitation. Lifeguards must be currently certified in lifeguarding, first aid, and cardiopulmonary resuscitation.

(2) In addition to any other remedies available to the department, the department may sue to enjoin the operation of any public swimming pool that uses any swimming instructor or lifeguard in violation of subsection (1).

(3) The department shall adopt rules necessary to implement this section which shall include, but not be limited to, defining the terms "swimming instructor," "lifeguard," and "nationally recognized aquatic training program."

## 514.072 Certification of swimming instructors for people who have developmental disabilities required.—

Any person working at a swimming pool who holds himself or herself out as a swimming instructor specializing in training people who have developmental disabilities, as defined in s. 393.063, may be certified by the Dan Marino Foundation, Inc., in addition to being certified under s. 514.071. The Dan Marino Foundation, Inc., must develop certification requirements and a training curriculum for swimming instructors for people who have developmental disabilities. A person certified under s. 514.071 on or after July 1, 2007, must meet the additional certification requirements of this section within 6 months after receiving certification under s. 514.071.

This act shall take effect July 1, 2006, only if a specific appropriation to the Department of Health to fund the Dan Marino Foundation, Inc., is made in the General Appropriations Act for fiscal year 2006-2007.

## 514.075 Public pool service technician; certification.—

The department may require that a public pool, as defined in s. 514.011, be serviced by a person certified as a pool service technician. To be certified, an individual must demonstrate knowledge of public pools which includes, but is not limited to: pool cleaning; general pool maintenance; source of the water supply; bacteriological, chemical, and physical quality of water; and water purification, testing, treatment, and disinfection procedures. The department may, by rule, establish the requirement for the certification course and course approval. The department shall deem certified any individual who is certified by a course of national recognition or any person licensed under s. 489.105(3)(j), (k), or (l). This requirement does not apply to a person, or the direct employee of a person, permitted as a public pool operator under s. 514.031.

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## 617.01011 Short title.——

This act may be cited as the "Florida Not For Profit Corporation Act."

## 617.0102 Reservation of power to amend or repeal.——

The Legislature has the power to amend or repeal all or part of this act at any time, and all domestic and foreign corporations subject to this act shall be governed by the amendment or repeal.

## 617.01201 Filing requirements.——

(1) A document must satisfy the requirements of this section and of any other section that adds to or varies these requirements to be entitled to filing by the Department of State.

(2) This act must require or permit filing the document in the office of the Department of State.

(3) The document must contain the information required by this act. It may contain other information as well.

(4) The document must be typewritten or printed and must be legible. If electronically transmitted, the document must be in a format that may be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of authority required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By a director of a domestic or foreign corporation, or by its president or by another of its officers;

(b) If directors or officers have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by the fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her or her signature his or her or her name and the capacity in which he or she signs. The document may, but need not, contain:

(a) The corporate seal,

(b) An attestation by the secretary or an assistant secretary,

(c) An acknowledgment, verification, or proof.

(8) If the Department of State has prescribed a mandatory form for the document under s. 617.0121, the document must be in or on the prescribed form.

(9) The document must be delivered to the department for filing. Delivery may be made by electronic transmission if and to the extent allowed by the department. If the document is filed in typewritten or printed form and not transmitted electronically, the department may require that one exact or conformed copy be delivered with the document, (except as provided in s. 617.1508, the document), and must be accompanied by the correct filing fee and any other tax or penalty required.

## 617.0121 Forms.——

(1) The Department of State may prescribe and furnish on request forms for:

(a) An application for certificate of status,

(b) A foreign corporation's application for certificate of authority to conduct its affairs in the state,

(c) A foreign corporation's application for certificate of withdrawal, and

(d) The annual report, for which the department may prescribe the use of the uniform business report, pursuant to s. 606.06. If the Department of State so requires, the use of these forms shall be mandatory.

(2) The Department of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this act, but their use shall not be mandatory.

## 617.0122 Fees for filing documents and issuing certificates. ——

The Department of State shall collect the following fees on documents delivered to the department for filing:

(1) Articles of incorporation: $35.

(2) Application for registered name: $87.50.

(3) Application for renewal of registered name: $87.50.

(4) Corporation's statement of change of registered agent or registered office or both if not included on the annual report: $35.

(5) Designation of and acceptance by registered agent: $35.

(6) Agent's statement of resignation from active corporation: $87.50.

(7) Agent's statement of resignation from inactive corporation: $35.

(8) Amendment of articles of incorporation: $35.

(9) Restatement of articles of incorporation with amendment of articles: $35.

(10) Articles of merger for each party thereto: $35.

(11) Articles of dissolution: $35.

(12) Articles of revocation of dissolution: $35.

(13) Application for reinstatement following administrative dissolution: $175.

(14) Application for certificate of authority to transact business in this state by a foreign corporation: $35.

(15) Application for amended certificate of authority: $35.

(16) Application for certificate of withdrawal by a foreign corporation: $35.

(17) Annual report: $61.25.

(18) Articles of correction: $35.

(19) Application for certificate of status: $8.75.

(20) Certified copy of document: $52.50.

(21) Serving as agent for substitute service of process: $87.50.

(22) Certificate of conversion of a limited agricultural association to a domestic corporation: $35.

(23) Any other document required or permitted to be filed by this chapter: $35.

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

## 617.0123 Effective date of document.——

(1) Except as provided in subsection (2) and in s. 617.0124(3), a document accepted for filing is effective at the time of filing on the date it is filed, as evidenced by the Department of State's date and time endorsement on the original document.

(2) A document may specify a delayed effective date, and if it does the document shall become effective on the date specified. Unless otherwise permitted by this act, a delayed effective date for a document may not be later than the 90th day after the date on which it is filed.

(3) If a document is determined by the Department of State to be incomplete and inappropriate for filing, the Department of State may return the document to the person or corporation filing it, together with a brief written explanation of the reason for the refusal to file, in accordance with s. 617.0125(3). If the applicant returns the document with corrections in accordance with the rules of the department within 60 days after it was mailed to the applicant by the department, and if at the time of return the applicant so requests in writing, the filing date of the document will be the filing date that would have been applied had the original document not been deficient, except as to persons who relied on the record before correction and were adversely affected thereby.

(4) Corporate existence may predate the filing date, pursuant to s. 617.0203(1).

## 617.0124 Correcting filed document.——

(1) A domestic or foreign corporation may correct a document filed by the department within 30 days after filing:

(a) The document contains an incorrect statement;

(b) The document contains false, misleading, or fraudulent information.

(c) The document was defectively executed, attested, sealed, verified, or acknowledged; or

(d) The electronic transmission of the document was defective.

(2) A document is corrected:

(a) By preparing articles of correction that:

1. Describe the document, including its filing date

2. Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

3. Correct the incorrect statement or defective execution; and

(b) By delivering the executed articles of correction to the department for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and who are adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(4) Articles of correction that are filed to correct false, misleading, or fraudulent information are not subject to a fee of the department if the articles of correction are delivered to the department within 15 days after the notification of filing sent pursuant to s. 617.0125(2)

## 617.0125 Filing duties of Department of State.——

(1) If a document delivered to the Department of State for filing satisfies the requirements of s. 617.01201, the Department of State shall file it.

(2) The department files a document by stamping or otherwise endorsing “filed,” together with the Secretary of State’s official title and the date and time of receipt. After filing a document, the department shall send a notice of the filing to the electronic mail address on file for the domestic or foreign corporation or its representative or send a copy of the document to the mailing address of such corporation or its representative. If the record changes the electronic mail address of the domestic or foreign corporation, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the domestic or foreign corporation, the department must send such notice to the new mailing address and to the most recent prior mailing address.

(3) If the Department of State refuses to file a document, it shall return it to the domestic or foreign corporation or its representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.

(4) The Department of State's duty to file documents under this section is ministerial. The filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) If not otherwise provided by law and the provisions of this act, the Department of State shall determine, by rule, the appropriate format for, number of copies of, manner of execution of, method of electronic transmission of, and amount of and method of payment of fees for, any document placed under its jurisdiction.

## 617.0126 Appeal from Department of State's refusal to file document.——

If the Department of State refuses to file a document delivered to its office for filing, within 30 days after return of the document by the department by mail, as evidenced by the postmark, the domestic or foreign corporation may:

(1) Appeal the refusal pursuant to s. 120.68; or

(2) Appeal the refusal to the circuit court of the county where the corporation's principal office (or, if none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Department of State's explanation of its refusal to file. The matter shall promptly be tried de novo by the court without a jury. The court may summarily order the Department of State to file the document or take other action the court considers appropriate. The court's final decision may be appealed as in other civil proceedings.

## 617.0127 Evidentiary effect of copy of filed document.——

A certificate attached to a copy of a document filed by the Department of State, bearing the signature of the Secretary of State (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the department.

## 617.0128 Certificate of status.——

(1) Anyone may apply to the Department of State to furnish a certificate of status for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of status or authorization sets forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) 1. That the domestic corporation is duly incorporated under the law of this state and the date of its incorporation, or

2. That the foreign corporation is authorized to conduct its affairs in this state;

(c) That all fees and penalties owed to the department have been paid, if:

1. Payment is reflected in the records of the department, and

2. Nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) That its most recent annual report required by s. 617.1622 has been delivered to the department; and

(e) That articles of dissolution have not been filed.

(3) Subject to any qualification stated in the certificate, a certificate of status or authorization issued by the department may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to conduct its affairs in this state.

## 617.01301 Powers of Department of State.——

(1) The Department of State may propound to any corporation subject to the provisions of this act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation has complied with all applicable filing provisions of this act. Such interrogatories must be answered within 30 days after mailing or within such additional time as fixed by the department. Answers to interrogatories must be full and complete, in writing, and under oath. Interrogatories directed to an individual must be answered by him or her, and interrogatories directed to a corporation must be answered by the president, vice president, secretary, or assistant secretary.

(2) The Department of State is not required to file any document:

(a) To which interrogatories, as propounded pursuant to subsection (1) relate, until the interrogatories are answered in full;

(b) When interrogatories or other relevant evidence discloses that such document is not in conformity with the provisions of this act; or

(c) When the department has determined that the parties to such document have not paid all fees, taxes, and penalties due and owing this state.

(3) The Department of State may, based upon its findings hereunder or as provided in s. 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to be due and owing the state and to compel any filing, qualification, or registration required by law. In connection with such proceeding the department may, without prior approval by the court, file a lis pendens against any property owned by the corporation and may further certify any findings to the Department of Legal Affairs for the initiation of any action permitted pursuant to s. 617.0503 which the Department of Legal Affairs may deem appropriate.

(4) The Department of State shall have the power and authority reasonably necessary to enable it to administer this act efficiently, to perform the duties herein imposed upon it, and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act conferring duties upon it.

## 617.01401 Definitions.——

As used in this act, unless the context otherwise requires, the term:

(1) "Articles of incorporation" includes original, amended, and restated articles of incorporation, articles of consolidation, and articles of merger, and all amendments thereto, including documents designated by the laws of this state as charters, and, in the case of a foreign corporation, documents equivalent to articles of incorporation in the jurisdiction of incorporation.

(2) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated, including, but not limited to, managers or trustees.

(3) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(4) "Corporation" or "domestic corporation" means a corporation not for profit, subject to the provisions of this chapter, except a foreign corporation.

(5) "Corporation not for profit" means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

(6) “Department” means the Department of State.

(7) “Distribution” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(a) A donation or transfer of corporate assets or income to or from another not-forprofit corporation qualified as tax-exempt under s. 501(c) of the Internal Revenue Code or a governmental organization exempt from federal and state income taxes, if such corporation or governmental organization is a member of the corporation making such donation or transfer, is not a distribution for purposes of this chapter.

(b) A dividend or distribution by a not-for-profit insurance company subsidiary to its mutual insurance holding company organized under part III of chapter 628, directly or indirectly through one or more intermediate holding companies authorized under that part, is not a distribution for the purposes of this chapter.

(8) “Electronic transmission” means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

(9) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(10) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(11) "Mail" means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.

(12) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws or the provisions of this chapter.

(13) “Mutual benefit corporation” means a domestic corporation that is not organized primarily or exclusively for religious purposes; is not recognized as exempt under s. 501(c)(3) of the Internal Revenue Code; and is not organized for a public or charitable purpose that is required upon its dissolution to distribute its assets to the United States, a state, a local subdivision thereof, or a person that is recognized as exempt under s. 501(c)(3) of the Internal Revenue Code. The term does not include an association organized under chapter 718, chapter 719, chapter 720, or chapter 721, or any corporation where membership in the corporation is required pursuant to a document recorded in county property records.

(14) "Person" includes individual and entity.

(15) “Successor entity” means any trust, receivership, or other legal entity that is governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and that exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation and enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation’s members any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

(16) “Voting power” means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not yet occurred. If the members of a class are entitled to vote as a class to elect directors, the determination of the voting power of the class is based on the percentage of the number of directors the class is entitled to elect relative to the total number of authorized directors. If the corporation’s directors are not elected by the members, voting power shall, unless otherwise provided in the articles of incorporation or bylaws, be on a one-member, one-vote basis.

## 617.0141 Notice.——

(1) Notice under this act must be in writing, unless oral notice is:

(a) Expressly authorized by the articles of incorporation or the bylaws; and

(b) Reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone (where oral notice is permitted), telegraph, teletype, or other form of electronic transmission; or by mail.

(3) Written notice by a domestic or foreign corporation authorized to conduct its affairs in this state to its member, if in a comprehensible form, is effective:

(a) When mailed, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members;

(b) When actually transmitted by facsimile telecommunication, if correctly directed to a number at which the member has consented to receive notice;

(c) When actually transmitted by electronic mail, if correctly directed to an electronic mail address at which the member has consented to receive notice;

(d) When posted on an electronic network that the member has consented to consult, upon the later of:

1. Such correct posting; or

2. The giving of a separate notice to the member of the fact of such specific posting; or

(e) When correctly transmitted to the member, if by any other form of electronic transmission consented to by the member to whom notice is given.

(4) Consent by a member to receive notice by electronic transmission shall be revocable by the member by written notice to the corporation. Any such consent shall be deemed revoked if:

(a) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(b) Such inability becomes known to the secretary or an assistant secretary of the corporation, or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action.

(5) Written notice to a domestic or foreign corporation authorized to conduct its affairs in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a corporation that has not yet delivered an annual report, in a domestic corporation's articles of incorporation or in a foreign corporation's application for certificate of authority.

(6) Except as provided in subsection (3) or elsewhere in this act, written notice, if in a comprehensible form, is effective at the earliest date of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(7) Oral notice is effective when communicated if communicated directly to the person to be notified in a comprehensible manner.

(8) An affidavit of the secretary, an assistant secretary, the transfer agent, or other authorized agent of the corporation that the notice has been given by a form of electronic transmission is, in the absence of fraud, prima facie evidence of the facts stated in the notice.

(9) If this act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not less stringent than the requirements of this section or other provisions of this act, those requirements govern.

## 617.02011 Incorporators.——

of a corporation by delivering articles of incorporation to the One or more persons may act as the incorporator or incorporators to the Department of State for filing.

## 617.0202 Articles of incorporation; content.——

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of s. 617.0401.

(b) The street address of the initial principal office and, if different, the mailing address of the corporation;

(c) The purpose or purposes for which the corporation is organized;

(d) A statement of the manner in which the directors are to be elected or appointed. In lieu thereof, the articles of incorporation may provide that the method of election of directors be stated in the bylaws;

(e) Any provision, not inconsistent with this act or with any other law, which limits in any manner the corporate powers authorized under this act;

(f) The street address of the corporation's initial registered office and the name of its initial registered agent at that address together with a written acceptance of appointment as a registered agent as required by s. 617.0501; and

(g) The name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Any provision not inconsistent with law, regarding the regulation of the internal affairs of the corporation, including, without limitation, any provision with respect to the relative rights or interests of the members as among themselves or in the property of the corporation;

(c) The manner of termination of membership in the corporation;

(d) The rights, upon termination of membership, of the corporation, the terminated members, and the remaining members;

(e) The transferability or nontransferability of membership;

(f ) The distribution of assets upon dissolution or final liquidation or, if otherwise permitted by law, upon partial liquidation;

(g) If the corporation is to have one or more classes of members, any provision designating the class or classes of members and stating the qualifications and rights of the members of each class;

(h) The names of any persons or the designations of any groups of persons who are to be the initial members;

(i ) A provision to the effect that the corporation will be subordinate to and subject to the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, foundation, federation, or other corporation, society, organization, or association not for profit; and

(j ) Any provision that under this act is required or permitted to be set forth in the bylaws. Any such provision set forth in the articles of incorporation need not be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

## 617.0203 Incorporation.——

(1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed or on a date specified in the articles of incorporation, if such date is within 5 business days prior to the date of filing.

(2) The Department of State's filing of the articles of incorporation, and the original recorded charter or certified copy of the charter of a corporation which has not been reincorporated under s. 617.0901, is conclusive proof that the incorporators satisfied all conditions precedent to incorporation and that the corporation has been incorporated under this act, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

## 617.0204 Liability for preincorporation transactions.——

All persons purporting to act as or on behalf of a corporation, having actual knowledge that there was no incorporation under this act, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also had actual knowledge that there was no incorporation.

## 617.0205 Organizational meeting of directors.——

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

1. To elect directors and complete the organization of the corporation; or

2. To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this act to be taken by incorporators or directors at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator or director.

(3) The directors or incorporators calling the organizational meeting shall give at least 3 days' notice thereof to each director or incorporator so named, stating the time and place of the meeting.

(4) An organizational meeting may be held in or out of this state.

## 617.0206 Bylaws.——

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

## 617.0207 Emergency bylaws.——

(1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (5). The emergency bylaws may make all provisions necessary for managing the corporation during an emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession if during such emergency any or all officers or agents of the corporation are for any reason rendered incapable of discharging their duties.

(3) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(4) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

## 617.0301 Purposes and application.——

Corporations may be organized under this act for any lawful purpose or purposes not for pecuniary profit and not specifically prohibited to corporations under other laws of this state. Such purposes include, without limitation, charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes. If special provisions are made, by law, for the organization of designated classes of corporations not for profit, such corporations shall be formed under such provisions and not under this act.

## 617.0302 Corporate powers.——

Every corporation not for profit organized under this act, unless otherwise provided in its articles of incorporation or bylaws, shall have power to:

(1) Have succession by its corporate name for the period set forth in its articles of incorporation.

(2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(3) Adopt, use, and alter a common corporate seal. However, such seal must always contain the words "corporation not for profit."

(4) Elect or appoint such officers and agents as its affairs shall require and allow them reasonable compensation.

(5) Adopt, change, amend, and repeal bylaws, not inconsistent with law or its articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers.

(6) Increase, by a vote of its members cast as the bylaws may direct, the number of its directors so that the number shall not be less than three but may be any number in excess thereof.

(7) Make contracts and guaranties, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure its obligations by mortgage and pledge of all or any of its property, franchises, or income.

(8) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States or any foreign country.

(9) Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(10) Acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

(11) Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(12) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(13) Lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested except as prohibited by s. 617.0833.

(14) Make donations for the public welfare or for religious, charitable, scientific, educational, or other similar purposes.

(15) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(16) Merge with other corporations or other eligible entities identified in s.607.1101, both for profit and not for profit, domestic and foreign, if the surviving corporation or other surviving eligible entity is a corporation not for profit or other eligible entity that has been organized as a not-for-profit entity under a governing statute or other applicable law that permits such a merger

## 617.0303 Emergency powers.——

(1) In anticipation of or during any emergency defined in subsection (5), the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office or designate alternative principal offices or regional offices or authorize the officers to do so.

(2) During an emergency defined in subsection (5), unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and

(c) The director or directors in attendance at a meeting, or any greater number affixed by the emergency bylaws, constitute a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An officer, director, or employee acting in accordance with any emergency bylaws is only liable for willful misconduct.

(5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

(6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency, and upon termination of the emergency, the emergency bylaws will cease to be operative.

## 617.0304 Ultra vires.——

(1) Except as provided in subsection (2), the validity of corporate action, including, but not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a corporation, may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a member against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, or through members in a representative suit, against an incumbent or former officer, employee, or agent of the corporation; or

(c) In a proceeding by the Attorney General, as provided in this act, to dissolve the corporation or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

(3) In a member's proceeding under paragraph (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

## 617.0401 Corporate name.——

(1) A corporate name:

(a) Must contain the word "corporation" or "incorporated" or the abbreviation "corp." or "inc." or words or abbreviations of like import in language, as will clearly indicate that it is a corporation instead of a natural person, unincorporated association, or partnership. The name of the corporation may not contain the word "company" or its abbreviation "co.";

(b) May contain the word "cooperative" or "co-op" only if the resulting name is distinguishable from the name of any corporation, agricultural cooperative marketing association, or nonprofit cooperative association existing or doing business in this state under chapter 607, chapter 618, or chapter 619;

(c) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted in this act and its articles of incorporation;

(d) May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation chartered under the laws of the United States; and

(e) Must be distinguishable from the names of all other entities or filings that are on file with the Division of Corporations, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state. A name that is different from a name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.

2. A definite or indefinite article.

3. The word “and” and the symbol “&.”

4. The singular, plural, or possessive form of a word.

5. A recognized abbreviation of a root word.

6. A punctuation mark or a symbol.

(2) Any corporation eligible to reincorporate under s. 617.0901, may do so and retain its corporate name, subject to the requirements of paragraphs (1)(a) and (b).

## 617.0403 Registered name; application; renewal; revocation.—

(1) A foreign corporation may register its corporate name, or its corporate name with any addition required by s. 617.1506, if the name is distinguishable upon the records of the Department of State from the corporate names that are not available under s. 617.0401(1)(e).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by s. 617.1506, by delivering to the Department of State for filing an application:

(a) Setting forth its corporate name, or its corporate name with any addition required by s. 617.1506, the state or country and date of its incorporation, and a brief description of the nature of its purposes and the affairs in which it is engaged; and

(b) Accompanied by a certificate of existence, or a certificate setting forth that such corporation is in good standing under the laws of the state or country wherein it is organized (or a document of similar import), from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application and shall be effective until the close of the calendar year in which the application for registration is filed.

(4) A foreign corporation the registration of which is effective may renew it from year to year by annually filing a renewal application which complies with the requirements of subsection (2) between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation the registration of which is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this act or by another foreign corporation thereafter authorized to conduct its affairs in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

(6) The Department of State may revoke any registration if, after a hearing, it finds that the application therefor or any renewal thereof was not made in good faith.

## 617.0501 Registered office and registered agent.——

(1) Each corporation shall have and continuously maintain in this state:

(a) A registered office which may be the same as its principal office; and

(b) A registered agent, who may be either:

1. An individual who resides in this state whose business office is identical with such registered office; or

2. (a) Another domestic entity that is an authorized entity whose business address is identical to the address of the registered office, or

(b)A foreign entity authorized to transact business in this state that is an authorized entity and whose business address is identical to the address of the registered office.

(2) This section does not apply to corporations which are required by law to designate the Chief Financial Officer as their attorney for the service of process.

(3) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 617.0502 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

(4) The Department of State shall maintain an accurate record of the registered agents and registered offices for the service of process and shall furnish any information disclosed thereby promptly upon request and payment of the required fee.

(5) A corporation may not maintain any action in a court in this state until the corporation complies with this section or s. 617.1508, as applicable, and pays to the Department of State any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays to the Department of State a penalty of $5 for each day it has failed to so comply or $500, whichever is less.

(6) For the purposes of this section, the term “authorized entity” means:

(a) A corporation for profit;

(b) A limited liability company;

(c) A limited liability partnership; or

(d) A limited partnership, including a limited liability limited partnership.

## 617.05015 Reserved name.—

(1) A person may reserve the exclusive use of the name of a corporation, including an alternate name for a foreign corporation whose name is not available, by delivering an application to the department for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the department finds that the name of the corporation applied for is available, it shall reserve the name for the applicant’s exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved name of a corporation may transfer the reservation to another person by delivering to the department a signed notice of the transfer that states the name and address of the transferee.

(3) The department may revoke any reservation if, after a hearing, it finds that the application therefor or any transfer thereof was not made in good faith.

## 617.0502 Change of registered office or registered agent; resignation of registered agent.——

(1) A corporation may change its registered office or its registered agent upon filing with the Department of State a statement of change setting forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If its current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;

(f) That the street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical; and

(g) That such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.

(2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the corporation at its principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document. The statement of resignation shall state that a copy of such statement has been mailed to the corporation at the address so stated. The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

(3) If a registered agent changes his or her business name or business address, he or she may change such name or address and the address of the registered office of any corporation for which he or she is the registered agent by:

(a) Notifying all such corporations in writing of the change;

(b) Signing (either manually or in facsimile) and delivering to the Department of State for filing a statement that substantially complies with the requirements of paragraphs (1)(a)-(f), setting forth the names of all such corporations represented by the registered agent; and

(c) Reciting that each corporation has been notified of the change.

(4) Changes of the registered office or registered agent may be made by a change on the corporation's annual report form filed with the Department of State.

(5) The Department of State shall collect a fee pursuant to s. 15.09(2) for filings authorized by this section.

## 617.0503 Registered agent; duties; confidentiality of investigation records——

(1) (a) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall have and continuously maintain in this state a registered office and a registered agent and shall file with the Department of State notice of the registered office and registered agent as provided in ss. 617.0501 and 617.0502. The appointment of a registered agent in compliance with s. 617.0501 or s. 617.0502 is sufficient for purposes of this section if the registered agent so appointed files, in the form and manner prescribed by the Department of State, an acceptance of the obligations provided for in this section.

(b) Each such corporation, foreign corporation, or alien business organization that fails to have and continuously maintain a registered office and a registered agent as required in this section is liable to this state for $500 for each year, or part of a year, during which the corporation, foreign corporation, or alien business organization fails to comply with these requirements; but this liability is forgiven in full upon the compliance by the corporation, foreign corporation, or alien business organization with the requirements of this subsection, even if that compliance occurs after an action to collect such amount is instituted. The Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business, or in which real property belonging to the corporation, foreign corporation, or alien business organization is located, to petition the court for an order directing that a registered agent be appointed and that a registered office be designated, and to obtain judgment for the amount owed under this subsection.

In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against real property owned by the corporation, foreign corporation, or alien business organization, which lis pendens shall set forth the legal description of the real property and shall be filed in the public records of the county where the real property is located. If the lis pendens is filed in any county other than the county in which the action is pending, the lis pendens that is filed must be a certified copy of the original lis pendens. The failure to comply timely or fully with an order directing that a registered agent be appointed and that a registered office be designated will result in a civil penalty of not more than $1,000 for each day of noncompliance. A judgment or an order of payment entered under this subsection becomes a judgment lien against any real property owned by the corporation, foreign corporation, or alien business organization when a certified copy of the judgment or order is recorded as required by s. 55.10. The department may avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment lien, any amount up to the amount of the judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01—895.09 and used or distributed in accordance with the procedure set forth in s. 895.09. A corporation, foreign corporation, or alien business organization that fails to have and continuously maintain a registered office and a registered agent as required in this section may not defend itself against any action instituted by the Department of Legal Affairs or by any other agency of this state until the requirements of this subsection have been met.

(2) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall, pursuant to subpoena served upon the registered agent of the corporation, foreign corporation, or alien business organization issued by the Department of Legal Affairs, produce, through its registered agent or through a designated representative within 30 days after service of the subpoena, testimony and records showing the following:

(a) True copies of documents evidencing the legal existence of the entity, including the articles of incorporation and any amendments to the articles of incorporation or the legal equivalent of the articles of incorporation and such amendments.

(b) The names and addresses of each current officer and director of the entity or persons holding equivalent positions.

(c) The names and addresses of all prior officers and directors of the entity or persons holding equivalent positions, for a period not to exceed the 5 years previous to the date of issuance of the subpoena.

(d) The names and addresses of each current shareholder, equivalent equitable owner, and ultimate equitable owner of the entity, the number of which names is limited to the names of the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in comparison to all other shareholders, equivalent equitable owners, or ultimate equitable owners, respectively, own the largest number of shares of stock of the corporation, foreign corporation, or alien business organization or the largest percentage of an equivalent form of equitable ownership of the corporation, foreign corporation, or alien business organization.

(e) The names and addresses of all prior shareholders, equivalent equitable owners, and ultimate equitable owners of the entity for the 12-month period preceding the date of issuance of the subpoena, the number of which names is limited to the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in comparison to all other shareholders, equivalent equitable owners, or ultimate equitable owners, respectively, own the largest number of shares of stock of the corporation, foreign corporation, or alien business organization or the largest percentage of an equivalent form of equitable ownership of the corporation, foreign corporation, or alien business organization.

(f ) The names and addresses of the person or persons who provided the records and information to the registered agent or designated representative of the entity.

(g) The requirements of paragraphs (d) and (e) do not apply to:

1. A financial institution;

2. A corporation, foreign corporation, or alien business organization the securities of which are registered pursuant to section 12 of the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a—78kk, if such corporation, foreign corporation, or alien business organization files with the United States Securities and Exchange Commission the reports required by section 13 of that act; or

3. A corporation, foreign corporation, or alien business organization, the securities of which are regularly traded on an established securities market located in the United States or on an established securities market located outside the United States, if such non-United States securities market is designated by rule adopted by the Department of Legal Affairs; upon a showing by the corporation, foreign corporation, or alien business organization that the exception in subparagraph 1., subparagraph 2., or subparagraph 3. applies to the corporation, foreign corporation, or alien business organization. Such exception in subparagraph 1., subparagraph 2., or subparagraph 3. does not, however, exempt the corporation, foreign corporation, or alien business organization from the requirements for producing records, information, or testimony otherwise imposed under this section for any period of time when the requisite conditions for the exception did not exist.

(3) The time limit for producing records and testimony may be extended for good cause shown by the corporation, foreign corporation, or alien business organization.

(4) A person, corporation, foreign corporation, or alien business organization designating an attorney, accountant, or spouse as a registered agent or designated representative shall, with respect to this state or any agency or subdivision of this state, be deemed to have waived any privilege that might otherwise attach to communications with respect to the information required to be produced pursuant to subsection (2), which communications are among such corporation, foreign corporation, or alien business organization; the registered agent or designated representative of such corporation, foreign corporation, or alien business organization; and the beneficial owners of such corporation, foreign corporation, or alien business organization. The duty to comply with the provisions of this section will not be excused by virtue of any privilege or provision of law of this state or any other state or country, which privilege or provision authorizes or directs that the testimony or records required to be produced under subsection (2) are privileged or confidential or otherwise may not be disclosed.

(5) If a corporation, foreign corporation, or alien business organization fails without lawful excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business or in which real property belonging to the corporation, foreign corporation, or alien business organization is located, for an order compelling compliance with the subpoena. The failure without a lawful excuse to comply timely or fully with an order compelling compliance with the subpoena will result in a civil penalty of not more than $1,000 for each day of noncompliance with the order. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against real property owned by the corporation, foreign corporation, or alien business organization, which lis pendens shall set forth the legal description of the real property and shall be filed in the public records of the county where the real property is located. If the lis pendens is filed in any county other than the county in which the action is pending, the lis pendens that is filed must be a certified copy of the original lis pendens. A judgment or an order of payment entered pursuant to this subsection will become a judgment lien against any real property owned by the corporation, foreign corporation, or alien business organization when a certified copy of the judgment or order is recorded as required by s. 55.10. The department may avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid at any judicial sale to enforce its judgment lien, an amount up to the amount of the judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01—895.09 and used or distributed in accordance with the procedure set forth in s. 895.09.

(6) Information provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution while the investigation is active. For purposes of this section, an investigation shall be considered “active” while such investigation is being conducted with a reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal proceeding. An investigation does not cease to be active so long as the department is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the department or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as defined in s. 119.011, and information which, if disclosed, would reveal a trade secret, as defined in s. 688.002, or would jeopardize the safety of an individual, all information, records, and transcriptions become available to the public when the investigation is completed or ceases to be active. The department shall not disclose confidential information, records, or transcriptions of testimony except pursuant to authorization by the Attorney General in any of the following circumstances:

(a) To a law enforcement agency participating in or conducting a civil investigation under chapter 895 or participating in or conducting a criminal investigation.

(b) In the course of filing, participating in, or conducting a judicial proceeding instituted pursuant to this section or chapter 895.

(c) In the course of filing, participating in, or conducting a judicial proceeding to enforce an order or judgment entered pursuant to this section or chapter 895.

(d) In the course of a criminal proceeding.

A person or law enforcement agency that receives any information, record, or transcription of testimony that has been made confidential by this subsection shall maintain the confidentiality of such material and shall not disclose such information, record, or transcription of testimony except as provided for herein. Any person who willfully discloses any information, record, or transcription of testimony that has been made confidential by this subsection, except as provided for in this subsection, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any information, record, or testimony obtained pursuant to subsection (2) is offered in evidence in any judicial proceeding, the court may, in its discretion, seal that portion of the record to further the policies of confidentiality set forth in this subsection.

(7) This section is supplemental and shall not be construed to preclude or limit the scope of evidence gathering or other permissible discovery pursuant to any other subpoena or discovery method authorized by law or rule of procedure.

(8) It is unlawful for any person, with respect to any record or testimony produced pursuant to a subpoena issued by the Department of Legal Affairs under subsection (2), to knowingly and willfully falsify, conceal, or cover up a material fact by a trick, scheme, or device; make any false, fictitious, or fraudulent statement or representation; or make or use any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) In the absence of a written agreement to the contrary, a registered agent is not liable for the failure to give notice of the receipt of a subpoena under subsection (2) to the corporation, foreign corporation, or alien business organization that appointed the registered agent if the registered agent timely sends written notice of the receipt of the subpoena by first-class mail or domestic or international air mail, postage fees prepaid, to the last address that has been designated in writing to the registered agent by the appointing corporation, foreign corporation, or alien business organization.

(10) The designation of a registered agent and a registered office as required by subsection (1) for a corporation, foreign corporation, or alien business organization that owns real property in this state or a mortgage on real property in this state is solely for the purposes of this chapter; and, notwithstanding s. 48.181, s. 617.1502, s. 617.1503, or any other relevant section of the Florida Statutes, such designation may not be used in determining whether the corporation, foreign corporation, or alien business organization is actually doing business in this state.

(11) As used in this section, the term:

(a) "Alien business organization" means:

1. Any corporation, association, partnership, trust, joint stock company, or other entity organized under any laws other than the laws of the United States, of any United States territory or possession, or of any state of the United States; or

2. Any corporation, association, partnership, trust, joint stock company, or other entity or device 10 percent or more of which is owned or controlled, directly or indirectly, by an entity described in subparagraph 1. or by a foreign natural person.

(b) "Financial institution" means:

1. A bank, banking organization, or savings association, as defined in s. 220.62;

2. An insurance company, trust company, credit union, or industrial savings bank, any of which is licensed or regulated by an agency of the United States or any state of the United States; or

3. Any person licensed under the provisions of chapter 494.

(c) "Mortgage" means a mortgage on real property situated in this state, except a mortgage owned by a financial institution.

(d) "Real property" means any real property situated in this state or any interest in such real property.

(e) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of whether such natural person owns or controls such ownership interest through one or other natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(12) Any alien business organization may withdraw its registered agent designation by delivering an application for certificate of withdrawal to the department for filing. The application shall set forth:

(a) The name of the alien business organization and the jurisdiction under the law of which it is incorporated or organized; and

(b) That it is no longer required to maintain a registered agent in this state.

## 617.0504 Service of process, notice, or demand on a corporation.——

(1) Process against any corporation may be served in accordance with chapter 48 or chapter 49.

(2) Any notice to or demand on a corporation made pursuant to this act may be made to the chair of the board, the president, any vice president, the secretary, the treasurer, the registered agent of the corporation at the registered office of the corporation in this state, or any address in this state that is in fact the principal office of the corporation in this state.

(3) This section does not prescribe the only means, or necessarily the required means, of serving notice or demand on a corporation.

## 617.0505 Distributions; Exceptions.

Except as authorized in s.617.1302 a corporation may not make distributions, to its members, directors, or officers.

(1) A mutual benefit corporation, such as a private club that is established for social, pleasure, or recreational purposes and that is organized as a corporation of which the equity interests are held by the members, may, subject to s. 617.1302, purchase the equity membership interest of any member, and the payment for such interest is not a distribution for purposes of this section.

(2) A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and, upon dissolution or final liquidation, may make distributions to its members as permitted by this chaptert.

(3) If expressly permitted by its articles of incorporation, a corporation may make distributions upon partial liquidation to its members, as permitted by this section. Any such payment, benefit, or distribution does not constitute a dividend or a distribution of income or profit for purposes of this section.

(4) A corporation that is a utility exempt from regulation under s. 367.022(7), whose articles of incorporation state that it is exempt from taxation under s. 501(c)(12) of the Internal Revenue Code, may make such refunds to its members, prior to a dissolution or liquidation, as its managing board deems necessary to establish or preserve its tax-exempt status. Any such refund does not constitute a dividend or a distribution of income or profit for purposes of this section.

(5) A corporation that is regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, or a corporation where membership in such corporation is required pursuant to a document recorded in the county property records, may make refunds to its members, giving credits to its members, disbursing insurance proceeds to its members, or disbursing or paying settlements to its members without violating this section.

## 617.0601 Members, generally.——

(1) (a) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the qualifications and rights of the members of each class, any quorum and voting requirements for meetings and activities of the members, and notice requirements sufficient to provide notice of meetings and activities of the members must be set forth in the articles of incorporation or in the bylaws.

(b) The articles of incorporation or bylaws of any corporation not for profit that maintains chapters or affiliates may grant representatives of such chapters or affiliates the right to vote in conjunction with the board of directors of the corporation notwithstanding applicable quorum or voting requirements of this chapter if the corporation is registered with the pursuant to ss. 496.401 - 496.424, the Solicitation of Contributions Act.

(c) This subsection does not apply to any condominium association organized under chapter 718.

(2) A corporation may issue certificates of membership. Stock certificates issued under former s. 617.011(2), Florida Statutes (1989), constitute certificates of membership for purposes of this section.

(3) Corporation members have no voting or other rights except as provided in the articles of incorporation or bylaws. However, members of any corporation existing on July 1, 1991, shall continue to have the same voting and other rights as before such date until changed by amendment of the articles of incorporation or bylaws.

(4) A corporation shall keep a membership book containing, in alphabetical order, the name and address of each member. The corporation shall also keep records in accordance with s. 617.1601.

(5) A resignation, expulsion, suspension, or termination of membership pursuant to s. 617.0606 or s. 617.0607 shall be recorded in the membership book. Unless otherwise provided in the articles of incorporation or the bylaws, all the rights and privileges of a member cease on termination of membership.

(6) Subsections(1), (2), (3), and (4) do not apply to a corporation that is an association as defined in s. 720.301.

(7) Where the articles of incorporation expressly limit membership in the corporation to property owners within specific measurable geographic boundaries and where the corporation has been formed for the benefit of all of those property owners, no such property owner shall be denied membership, provided that such property owner once admitted to membership, shall comply with the terms and conditions of membership. Any bylaws, rules, or other regulations to the contrary are deemed void and any persons excluded from membership by such bylaws, rules, or other regulations are deemed members with full rights, including the right, by the majority, or as otherwise provided in the articles of incorporation, to all for a meeting of the membership.

## 617.0604 Liability of members.——

(1) A member of a corporation is not, as such, personally liable for any act, debt, liability, or obligation of the corporation.

(2) A member may become liable to the corporation for dues, assessments, or fees as provided by law.

## 617.0605 Transfer of membership interests.—

(1) A member of a corporation may not transfer a membership or any right arising from membership except as otherwise allowed in this section.

(2) Except as set forth in the articles of incorporation or bylaws of a mutual benefit corporation, a member of a mutual benefit corporation may not transfer a membership or any right arising from membership.

(3) If transfer rights have been provided for one or more members of a mutual benefit corporation, a restriction on such rights is not binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

## 617.0606 Resignation of members.—

(1) Except as may be provided in the articles of incorporation or bylaws of a corporation, a member of a mutual benefit corporation may not transfer a membership or any right arising from membership.

(2) The resignation of a member does not relieve the member from any obligations that the member may have to the corporation as a result of obligations incurred or commitments made before resignation.

## 617.0607 Termination, expulsion, and suspension.—

(1) A member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) Any written notice given by mail must be delivered by certified mail or first-class mail to the last address of the member shown on the records of the corporation.

(3) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which the defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(4) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension.

## 617.0608 Purchase of memberships.—

(1) A corporation may not purchase any of its memberships or any right arising from membership except as provided in s. 617.0505 or subsection (2).

(2) Subject to s. 617.1302, a mutual benefit corporation may purchase the membership of a member who resigns, or whose membership is terminated, for the amount and pursuant to the conditions set forth in its articles of incorporation or bylaws.

## 617.0701 Meetings of members, generally; failure to hold annual meeting; special meeting; consent to corporate actions without meetings; waiver of notice of meetings.——

(1) The frequency of all meetings of members, the time and manner of notice of such meetings, the conduct and adjournment of such meetings, the determination of members entitled to notice or to vote at such meetings, and the number or voting power of members necessary to constitute a quorum, shall be determined by or in accordance with the articles of incorporation or the bylaws. The place and time of all meetings may be determined by the board of directors.

(2) Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the corporation, nor does such failure affect otherwise valid corporate acts, except as provided in s. 617.1430 in the case of a deadlock among the directors or the members.

(3) Except as provided in the articles of incorporation or bylaws special meetings of the members may be called by:

(a) The president;

(b) The chair of the board of directors;

(c) The board of directors; or such

(d) Other officers or persons as are provided for in the articles of incorporation or the bylaws;

(e) The holders of at least 5 percent of the voting power of a corporation when one or more written demands for the meeting, which describe the purpose for which the meeting is to be held, are signed, dated, and delivered to a corporate officer; or

(f) A person who signs a demand for a special meeting pursuant to paragraph (e) if notice for a special meeting is not given within 30 days after receipt of the demand. The person signing the demand may set the time and place of the meeting and give notice under this subsection.

(4) Unless otherwise provided in the articles of incorporation, action required or permitted by this act to be taken at an annual or special meeting of members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted.

(a) To be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the corporation to its principal office in this state, its principal place of business, the corporate secretary, or another officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Written consent to take the corporate action referred to in the consent is not effective unless

the consent is signed by members having the requisite number of votes necessary to authorize the action within 90 days after the date of the earliest dated consent and is delivered in the manner required by this section.

(b) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the corporation at its principal office in this state or its principal place of business, or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

(c) Within 30 days after obtaining authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(e) If the action to which the members consent is such as would have required the filing of articles or a certificate under any other section of this chapter if such action had been voted on by members at a meeting, the articles of certificate filed under such other section must state that written consent has been given in accordance with this section.

(f) Whenever action is taken pursuant to this section, the written consent of the members consenting to such action or the written reports of inspectors appointed to tabulate such consents must be filed with the minutes of member proceedings.

(5) (a) Notice of a meeting of members need not be given to any member who signs a waiver of notice, in person or by proxy, either before or after the meeting. Unless required by the bylaws, neither the affairs transacted nor the purpose of the meeting need be specified in the waiver.

(b) Attendance of a member at a meeting, either in person or by proxy, constitutes waiver of notice and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, unless the member attends a meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

(6) Subsections (1) and (3) do not apply to any corporation that is an association as defined in s. 720.301; a corporation regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723; or a corporation where membership in such corporation is required pursuant to a document recorded in the county property records.

## 617.0721 Voting by members.——

(1) Members are not entitled to vote except as conferred by the articles of incorporation or the bylaws.

(2) A member who is entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his or her duly authorized attorney in fact. Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy.

An appointment of a proxy is not valid after 11 months following the date of its execution unless otherwise provided in the proxy.

(a) If directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(b) A corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubting the validity of the signature on it or the signatory’s authority to sign for the member.

(3) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, members and proxy holders who are not physically present at a meeting may, by means of remote communication:

(a) Participate in the meeting.

(b) Be deemed to be present in person and vote at the meeting if:

1. The corporation implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a member or proxy holder; and

2. The corporation implements reasonable measures to provide such members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrent with the proceedings. If any member or proxy holder votes or takes other action by means of remote communication, a record of that member’s participation in the meeting must be maintained by the corporation in accordance with s. 617.1601.

(4) If any corporation, whether for profit or not for profit, is a member of a corporation organized under this act, the chair of the board, president, any vice president, the secretary, or the treasurer of the member corporation, and any such officer or cashier or trust officer of a banking or trust corporation holding such membership, and any like officer of a foreign corporation whether for profit or not for profit, holding membership in a domestic corporation, shall be deemed by the corporation in which membership is held to have the authority to vote on behalf of the member corporation and to execute proxies and written waivers and consents in relation thereto, unless, before a vote is taken or a waiver or consent is acted upon, it appears pursuant to a certified copy of the bylaws or resolution of the board of directors or executive committee of the member corporation that such authority does not exist or is vested in some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself or herself at a meeting as one of such officers of a corporate member shall be, for the purposes of this section, conclusively deemed to be duly elected, qualified, and acting as such officer and to be fully authorized. In the case of conflicting representation, the corporate member shall be represented by its senior officer, in the order stated in this subsection.

(5) The articles of incorporation or the bylaws may provide that, in all elections for directors, every member entitled to vote has the right to cumulate his or her votes and to give one candidate a number of votes equal to the number of votes he or she could give if one director were being elected multiplied by the number of directors to be elected or to distribute such votes on the same principles among any number of such candidates. A corporation may not have cumulative voting unless such voting is expressly authorized in the articles of incorporation.

(6) If a corporation has no members or its members do not have the right to vote, the directors shall have the sole voting power.

(7) Subsections (1), (5), and (6) do not apply to a corporation that is an association, as defined in s. 720.301, or a corporation regulated by chapter 718 or chapter 719.

## 617.0725 Quorum.——

An amendment to the articles of incorporation or the bylaws which adds, changes or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect of proposed to be adopted, whichever is greater. amended.

## 617.07401 Members’ derivative actions.—

(1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a member of the corporation when the transaction complained of occurred or unless the person became a member through transfer by operation of law from one who was a member at that time.

(2) A complaint in a proceeding brought in the right of a domestic or foreign corporation must be verified and allege with particularity the demand made to obtain action by the board of directors and that the demand was refused or ignored by the board of directors for at least 90 days after the date of the first demand unless, before the expiration of the 90 days, the person was notified in writing that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period. If the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the court finds that one of the groups specified in paragraphs (a)-(c) has made a good faith determination after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative suit is not in the best interests of the corporation. The corporation has the burden of proving the independence and good faith of the group making the determination and the reasonableness of the investigation. The determination shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors, if the independent directors constitute a quorum;

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum; or

(c) A panel of one or more independent persons appointed by the court upon motion by the corporation.

(4) A proceeding commenced under this section may not be discontinued or settled without the approval of the court. If the court determines that a proposed discontinuance or settlement substantially affects the interest of the members of the corporation, or a class, series, or voting group of members, the court shall direct that notice be given to the members affected. The court may determine which party or parties to the proceeding shall bear the expense of giving the notice.

(5) Upon termination of the proceeding, the court may require the plaintiff to pay any defendant’s reasonable expenses, including reasonable attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(6) The court may award reasonable expenses for maintaining the proceeding, including reasonable attorney fees, to a successful plaintiff or to the person commencing the proceeding who receives any relief, whether by judgment, compromise, or settlement, and may require that the person account for the remainder of any proceeds to the corporation; however, this subsection does not apply to any relief rendered for the benefit of injured members only and is limited to a recovery of the loss or damage of the injured members.

## 617.0801 Duties of board of directors.——

All corporate powers must be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

## 617.0802 Qualifications of directors.——

(1) Directors must be natural persons who are 18 years of age or older but need not be residents of this state or members of the corporation unless the articles of incorporation or bylaws so require. For a corporation organized according to the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, but not for a corporation regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 or a corporation for which membership in such corporation is required pursuant to a document recorded in the county property records, one director may be 15 years of age or older if so permitted in the articles of incorporation or bylaws or by resolution of the board of directors. The articles of incorporation or the bylaws may prescribe additional qualifications for directors.

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners’ association, or mobile homeowners’ association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a beneficiary as defined in former s. 737.303(4)(b) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners’ association, or mobile homeowners’ association, provided that said beneficiary occupies the unit, parcel, or mobile home.

## 617.0803 Number of directors.——

(1) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or the bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but the corporation must never have fewer than three directors.

(3) Directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws.

## 617.0806 Staggered terms for directors.——

The articles of incorporation or bylaws may provide that directors be divided into classes. Each director shall hold office for the term to which he or she is elected or appointed and until his or her successor has been elected or appointed and qualified or until his or her earlier resignation, removal from office, or death.

## 617.0807 Resignation of directors.——

(1) A director may resign at any time by delivering written notice to the board of directors or its chair or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

## 617.0808 Removal of directors.——

(1) Subject to subsection (2),a director may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws, which shall provide the following, and if they do not do so, shall be deemed to include the following:

(a) Any member of the board of directors may be removed from office with or without cause by the vote or agreement in writing by a majority of all votes of the membership.

1. Except as provided in paragraph (i), a majority of all votes of the directors, if the director was elected or appointed by the directors; or

2. A majority of all votes of the members, if the director was elected or appointed by the members.

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping. However:

1. A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors, except as provided in subparagraphs 2. and 3.

2. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the removal of the director.

3. If at the beginning of the term of a director the articles of incorporation or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal the vote or agreement in writing by a majority of all votes of the membership.

(c) The notice of a meeting of the members to recall a member or members of the board of directors shall state the specific directors sought to be removed.

(d) A proposed removal of a director at a meeting shall require a separate vote for each director whose removal is sought. Where removal is sought by written consent, a separate consent is required for each director to be removed.

(e) If removal is effected at a meeting, any vacancies created thereby shall be filled by the members or directors eligible to vote for the removal.

(f) Any director who is removed from the board is not eligible to stand for reelection until the next annual meeting at which directors are elected.

(g) Any director removed from office shall turn over to the board of directors within 72 hours any and all records of the corporation in his or her possession.

(h) If a director who is removed does not relinquish his or her office or turn over records as required under this section, the circuit court in the county where the corporation's principal office is located may summarily order the director to relinquish his or her office and turn over corporate records upon application of any member.

(i) A director elected or appointed by the board may be removed without cause by a vote of two-thirds of the directors then in office or such greater number as is set forth in the articles of incorporation or bylaws.

(2) A director of a corporation described in s. 501(c) of the Internal Revenue Code may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws, and the corporation may provide in the articles of incorporation or the bylaws that it is subject to the provisions of subsection (1).

(3) This section does not apply to any corporation that is an association, as defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719.

## 617.0809 Board vacancy. ——

(1) Except as provided in s.617.0808(1)(f), any vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum, or by the sole remaining director, as the case may be, or, if the vacancy is not so filled or if no director remains, by the members or, on the application of any person, by the circuit court of the county where the registered office of the corporation is located.

(2) Whenever a vacancy occurs with respect to a director elected by a class, chapter, unit, or group, the vacancy may be filled only by members of that class, chapter, unit, or group, or by a majority of the directors then in office elected by such class, chapter, unit, or group.

(3) The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for a term of office continuing until the next election of directors by the members or, if the

corporation has no members or no members having the right to vote thereon, for such term of office as is provided in the articles of incorporation or the bylaws.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under s. 617.0807 or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

## 617.08101 Compensation of directors.——

Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may fix the compensation of directors.

## 617.0820 Meetings.——

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the board of directors to another time and place. Unless the bylaws otherwise provide, notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(3) Meetings of the board of directors may be called by the chair of the board or by the president unless otherwise provided in the articles of incorporation or the bylaws.

(4) Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

## 617.0821 Action by directors without a meeting.——

(1) Unless the articles of incorporation or the bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken by all members of the board or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

## 617.0822 Notice of meetings.——

(1) Unless the articles of incorporation or the bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or the bylaws provide for a longer or shorter period, a special meeting of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or the bylaws.

## 617.0823 Waiver of notice.——

Notice of a meeting of the board of directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.

## 617.0824 Quorum and voting.——

(1) Unless the articles of incorporation or the bylaws require a different number, a quorum of a board of directors consists of a majority of the number of directors prescribed by the articles of incorporation or the bylaws. Directors younger than 18 years of age may not be counted toward a quorum.

(2) The articles of incorporation may authorize a quorum of a board of directors to consist of less than a majority but no fewer than one-third of the prescribed number of directors determined under the articles of incorporation or the bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or the bylaws require the vote of a greater number of directors.

(4) A director of a corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) The director objects, at the beginning of the meeting or promptly upon his or her arrival, to holding the meeting or transacting specified affairs at the meeting; or

(b) The director votes against or abstains from the action taken.

## 617.0825 Committees.——

(1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may create an executive committee and one or more other committees of the board and appoint directors or such other persons as the board of directors designates to serve on such committee or committees. The majority of the persons on each committee must be directors.

(2) Notwithstanding subsection (1), a board committee may be composed of less than a majority of directors or entirely of non-directors if:

(a) The committee is created by the board of directors or is otherwise authorized by the articles of incorporation or the bylaws; and

(b) The committee relates to the election, nomination, qualification, or credentials of directors or is involved in the process of electing directors.

(3) To the extent provided by the board of directors in a such resolution or in the articles of incorporation or the bylaws of the corporation, each such committee shall have and may exercise powers and all the authority of the board of directors, except that no such committee shall have the power or authority to:

(a) Approve or recommend to members actions or proposals required by this act to be approved by members.

(b) Fill vacancies on the board of directors or any committee thereof.

(c) Adopt, amend, or repeal the bylaws.

(4) Unless the articles of incorporation or the bylaws provide otherwise, ss. 617.0820, 617.0822, 617.0823, and 617.0824, which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(5) Each committee must have two or more members who serve at the pleasure of the board of directors. The board, by resolution adopted in accordance with and consistent with subsection (1), may designate one or more alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.

(6) A committee member who is not a director has the same responsibility and fiduciary duties with respect to activities of such committee, and the same liability protections, as a committee member who is a director.

(7) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(8) A corporation may create or authorize the creation of one or more advisory committees with any number of persons on the committee being non-directors. An advisory committee:   
(a) Is not a committee of the board of directors; and   
  
(b) May not act on behalf of or exercise any of the powers or authority of the board of directors or bind the corporation to any action, but may make recommendations to the board of directors, to the officers, or to the members.

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.303(2), or s. 720.3035(1), respectively.

## 617.0830 General standards for directors.——

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

## 617.0831 Indemnification and liability of officers, directors, employees, and agents.——

Except as provided in s. 617.0834, ss. s. 607.0831 and ss. 607.0850-607.0859 apply to a corporation organized under this act and a rural electric cooperative organized under chapter 425. Any reference to "directors" in those sections includes the directors, managers, or trustees of a corporation organized under this act or of a rural electric cooperative organized under chapter 425. However, the term "director" as used in s. 607.0831 and ss. 607.0850-607.0859 does not include a director appointed by the developer to the board of directors of a condominium association under chapter 718, a cooperative association under chapter 719, a homeowners’ association defined in s. 720.301, or a time-share managing entity under chapter 721. Any reference to "shareholders" in those sections includes members of a corporation organized under this act and members of a rural electric cooperative organized under chapter 425.

## 617.0832 Director conflicts of interest.——

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

(2) For purposes of paragraph (1)(a) only, a conflict-of-interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no relationship or interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director having a relationship or interest in the transaction does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (1), but such presence or vote of such a director may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(3) For purposes of paragraph (1)(b), a conflict-of-interest transaction is authorized, approved, or ratified if it receives the vote of a majority in interest of the members entitled to vote under this subsection. A director who has a relationship or interest in the transaction described in subsection (1) may not vote to determine whether to authorize, approve, or ratify a conflict-of-interest transaction under paragraph (1)(b). However, the vote of that director is counted in determining whether the transaction is approved under other sections of this chapter. A majority in interest of the members entitled to vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section. As used in this subsection, the term “majority in interest” refers to a majority of the voting shares or other voting units allotted to the members.

## 617.0833 Loans to directors or officers.——

Loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, may not be made by a corporation to its directors or officers, or to any other corporation, firm, association, or other entity in which one or more of its directors or officers is a director or officer or holds a substantial financial interest, except a loan by one corporation which is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, to another corporation which is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended. A loan made in violation of this section is a violation of the duty to the corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan is not be affected.

## 617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.——

(1) An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

(a) The officer or director breached or failed to perform his or her duties as an officer or director; and

(b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or

3. Recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term:

(a) "Recklessness" means the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the officer or director; and

2. Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

(b) "Director" means a person who serves as a director, trustee, or member of the governing board of an organization.

(c) "Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

## 617.0835 Prohibited activities by private foundations.——

(1) As used in this section, section references, unless otherwise indicated, refer to the Internal Revenue Code of 1986, as amended, Title 26 of the United States Code, including corresponding provisions of any subsequent federal tax laws.

(2) A corporation, during the period it is a "private foundation" as defined in s. 509(a), may not:

(a) Engage in any act of "self-dealing," as defined in s. 4941(d), which would give rise to any liability for the tax imposed by s. 4941(a);

(b) Retain any "excess business holdings," as defined in s. 4943(c), which would give rise to any liability for the tax imposed by s. 4943(a);

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of s. 4944, so as to give rise to any liability for the tax imposed by s. 4944(a); and

(d) Make any "taxable expenditures," as defined in s. 4945(d), which would give rise to any liability for the tax imposed by s. 4945(a).

(3) Each corporation, during the period it is a "private foundation" as defined in s. 509, shall distribute, for the purposes specified in its articles of incorporation or organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by s. 4942(a).

(4) The provisions of subsections (2) and (3) do not apply to any corporation to the extent that a court of competent jurisdiction determines that such application would be contrary to the terms of the articles of incorporation or organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such subsections.

(5) This section shall not impair the rights and powers of the courts or of the Department of Legal Affairs with respect to any corporation.

## 617.0840 Required officers.——

(1) A corporation shall have the officers described in its articles of incorporation or its bylaws who shall be elected or appointed at such time and for such terms as is provided in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed by the board of directors annually.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

## 617.0841 Duties of officers.——

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of any officer authorized by the bylaws or the board of directors to prescribe the duties of other officers.

## 617.0842 Resignation and removal of officers.——

(1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date of the pending vacancy.

(2) A board of directors may remove any officer at any time with or without cause. Any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

## 617.0843 Contract rights of officers.——

(1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

## 617.0901 Reincorporation.——

(1) Any corporation which has a charter approved by a circuit judge under former chapter 617, Florida Statutes (1989), or a charter granted by the Legislature of this state, on or prior to September 1, 1959, the effective date of chapter 59—427, Laws of Florida, may reincorporate under this act by filing with the Department of State a copy of its charter and all amendments thereto, certified by the clerk of the circuit court of the county wherein recorded, as to charters and amendments granted by circuit judges, and by the Department of State, as to legislative charters, together with a certificate containing the provisions required in original articles of incorporation by s. 617.0202, and accepting the provisions of this act.

(2) A certificate of reincorporation must be executed in accordance with s. 617.01201, and it must show that its issuance was duly authorized by a meeting of its members regularly called, or if there are no members entitled to vote on reincorporation, by a meeting of its board of directors. Upon the filing of a certificate of reincorporation in accordance with s. 617.01201, the corporation shall be deemed to be incorporated under this act and the certificate shall constitute its articles of incorporation.

(3) The corporation shall then be entitled to and be possessed of all the privileges, franchises, and powers as if originally incorporated under this act, and all the properties, rights, and privileges belonging to the corporation prior to reincorporation, which were acquired by gift, grant, conveyance, assignment, or otherwise are hereby ratified, approved, confirmed, and assured to the corporation with like effect and to all intents and purposes as if they had been originally acquired pursuant to incorporation under this act. However, any corporation reincorporating under this act shall be subject to all the contracts, duties, and obligations resting upon the corporation prior to reincorporation or to which the corporation shall then be in any way liable.

## 617.1001 Authority to amend the articles of incorporation.——

(1) A corporation may amend its articles of incorporation at any time as provided in this act.

(2) A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose, or duration of the corporation.

## 617.1002 Procedure for amending articles of incorporation.——

(1) Unless the articles of incorporation provide an alternative procedure, amendments to the articles of incorporation must be made in the following manner:

(a) If there are members entitled to vote on a proposed amendment to the articles of incorporation, the board of directors must adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote on the proposed amendment, which may be either an annual or a special meeting.

Written notice setting forth the proposed amendment or a summary of the changes to be effected by the amendment must be given to each member entitled to vote at such meeting in accordance with the articles of incorporation or the bylaws. The proposed amendment shall be adopted upon receiving at least a majority, or any larger or smaller percentage specified in the articles of incorporation or the bylaws, of the votes which members present at such meeting or represented by proxy are entitled to cast; or

(b) If there are no members or if members are not entitled to vote on proposed amendments to the articles of incorporation, an amendment may be adopted at a meeting of the board of directors by a majority vote of the directors then in office.

(2) Unless otherwise provided in the articles of incorporation, members entitled to vote on proposed amendments to the articles of incorporation may amend the articles of incorporation, without action by the directors, at a meeting for which notice of the changes to be made is given.

(3) Any number of amendments may be submitted and voted upon at any one meeting.

## 617.1006 Contents of articles of amendment.——

The articles of amendment must be executed by the corporation as provided in s. 617.01201 and must set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If there are members entitled to vote on a proposed amendment, the date of the adoption of the amendment by the members and a statement that the number of votes cast for the amendment was sufficient for approval; and

(4) If there are no members or if members are not entitled to vote on a proposed amendment, a statement of such fact and the date of the adoption of the amendment by the board of directors.

## 617.1007 Restated articles of incorporation.——

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without a vote of the members.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring member approval, it must be adopted as provided in s. 617.1002.

(3) A corporation restating its articles of incorporation shall deliver to the department for filing articles of restatement, executed in accordance with s. 617.01201, setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles of incorporation requiring member approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles of incorporation requiring member approval, the information required by s. 617.1006.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(5) The Department of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (3).

## 617.1008 Amendment pursuant to reorganization.——

(1) A corporation's articles of incorporation may be amended without action by the board of directors or members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under any federal or state law if the articles of incorporation, after amendment, contain only provisions required or permitted by s. 617.0202.

(2) The individual or individuals designated by the court shall deliver to the Department of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal or state law.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

## 617.1009 Effect of amendment.——

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

## 617.1101 Plan of merger.——

(1) Any two or more domestic corporations may merge into one domestic corporation pursuant to a plan of merger approved in the manner provided in this section.

(2) Each corporation must adopt a plan of merger setting forth:

(a) The names of the corporations proposing to merge and the name of the surviving corporation into which each other corporation plans to merge, which is designated as the surviving corporation;

(b) The terms and conditions of the proposed merger;

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

(d) The manner and basis, if any, of converting the memberships of each merging corporation into memberships, obligations, or securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property.

(3) The plan of merger may set forth:

(a) Amendments to, or a restatement of, the articles of incorporation of the surviving corporation;

(b) The effective date of the merger, which may be on or after the date of filing the articles of incorporation or merger; or

(c) Other provisions relating to the merger.

## 617.1102 Limitation on merger.—

A corporation not for profit organized under this chapter may merge with one or more other eligible entities, as identified in s. 607.1101, only if the surviving entity of such merger is a corporation not for profit or other eligible entity that has been organized as a not-for-profit entity under a governing statute or other applicable law that allows such a merger.

## 617.1103 Approval of plan of merger; abandonment of plan thereafter.——

(1) A plan of merger must be adopted in the following manner:

(a) If the members of any merging corporation are entitled to vote on a plan of merger, the board of directors of such corporation must adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote on the proposed plan, which may be either an annual or special meeting. Written notice setting forth the proposed plan or a summary thereof must be given to each member entitled to vote at such meeting in accordance with the articles of incorporation or the bylaws. The proposed plan shall be adopted upon receiving at least a majority of the votes which members present at each such meeting or represented by proxy are entitled to cast; or

(b) If a merging corporation has no members or if its members are not entitled to vote on a plan of merger, such plan may be adopted at a meeting of its board of directors by a majority vote of the directors then in office.

(2) Unless a plan of merger prohibits abandonment of the merger without approval by the members entitled to vote on the plan of merger, after authorization for a planned merger by a vote of members, the board of directors may, in its discretion, abandon such planned merger, subject to the rights of third parties under any contracts relating to the planned merger, at any time prior to the filing of articles of merger by any corporation party to the merger without any further action or approval by the members.

## 617.1105 Articles of merger.——

Articles of merger must be executed by each corporation, as provided in s. 617.01201 and must set forth:

(1) The plan of merger;

(2) If the members of any merging corporation are entitled to vote on such a plan, then, as to each such corporation, the date of the meeting of members at which the plan of merger was adopted, a statement that the number of votes cast for the merger was sufficient for approval, and the vote on the plan, or a statement that such plan was adopted by written consent and executed in accordance with s. 617.0701;

(3) If a merging corporation has no members or if its members are not entitled to vote on a plan of merger, then, as to each such corporation, a statement of such fact, the date of the adoption of the plan by the board of directors, the number of directors then in office, and the vote for the plan; and

(4) The effective date of the merger if the effective date of the merger is to occur after the delivery of the articles of merger to the Department of State.

## 617.1106 Effect of merger.——

When a merger becomes effective:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property, or any interest therein, owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each corporation party to the merger;

(4) Any claim existing or action or proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation which ceased existence;

(5) Neither the rights of creditors nor any liens upon the property of any corporation party to the merger shall be impaired by such merger;

(6) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(7) Members of each corporation which is a party to the merger, other than the surviving corporation, are entitled only to the rights, if any, provided in the articles of merger.

## 617.1107 Merger of domestic and foreign corporations.——

(1) One or more foreign corporations and one or more domestic corporations may be merged into a corporation of this state or of another jurisdiction if such merger is permitted by the laws of the jurisdiction under which each such foreign corporation is organized and if:

(a) Each foreign corporation complies with the applicable laws of the jurisdiction under which it is organized; and

(b) Each domestic corporation complies with the provisions of this act relating to the merger of domestic corporations.

(2) If the surviving corporation is to be governed by the laws of any jurisdiction other than this state, it must comply with the provisions of this act with respect to foreign corporations if it is to conduct its affairs in this state, and in every case it will be deemed to have filed with the Department of State:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger; and

(b) An irrevocable appointment of the Department of State of this state as its agent to accept service of process in any such proceeding.

(3) If the surviving corporation is to be governed by the laws of this state, the effect of such merger is the same as in the case of the merger of domestic corporations. If the surviving corporation is to be governed by the laws of any jurisdiction other than this state, the effect of such merger is governed by the laws of such other jurisdiction.

(4) At any time prior to the filing of the articles of merger by the Department of State, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

## 617.1108 Merger of domestic corporation and other eligible entities.—

(1) Subject to s. 617.0302(16) and other applicable provisions of this chapter, ss. 607.1101, 607.1103, 607.1105, 607.1106, and 607.1107 shall apply to a merger involving a corporation not for profit organized under this act and one or more other business entities identified in s. 607.1108(1).

(2) A domestic corporation not for profit organized under this chapter is not required to file articles of merger pursuant to this section if the corporation not for profit is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 605.1025, s. 607.1105, s. 620.2108(3), or s. 620.8918(1) and (2). In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (3).

(3) A copy of the articles of merger or certificate of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger, other than the surviving entity, is situated.

## 617.1201 Secured transactions and other dispositions of corporate property and assets not requiring member approval.——

(1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors may authorize any of the following transactions without any vote or consent of the members, even though the corporation has members entitled to vote:

(a) Any mortgage or pledge of, or creation of a security interest in, or conveyance of title to, all or any part of the property and assets of the corporation of any description, or any interest therein, for the purpose of securing the payment or performance of any contract, note, bond, or other obligation of the corporation;

(b) Any sale, lease, exchange, or other disposition of less than substantially all the property and assets of the corporation; and

(c) Any sale of all or substantially all of the property and assets of the corporation if:

1. The corporation is insolvent and a sale for cash or its equivalent is deemed advisable by the board in order to meet the liabilities of the corporation; or

2. The corporation was incorporated for the purpose of liquidating such property and assets.

(2) Any transaction made pursuant to this section without any vote or consent of the members may be upon such terms and conditions and for such consideration as the board may deem to be in the best interests of the corporation.

## 617.1202 Sale, lease, exchange, or other disposition of corporate property and assets requiring member approval.——

A sale, lease, exchange, or other disposition of all or substantially all of the property and assets of a corporation, in all cases other than those not requiring member approval as specified in s. 617.1201, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds, or other securities of any corporation or corporations for profit, domestic or foreign, and must be authorized in the following manner:  
(1) If the corporation has members entitled to vote on the sale, lease, exchange, or other disposition of corporate property, the board of directors must adopt a resolution approving such sale, lease, exchange, or other disposition, and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation must be given to each member entitled to vote at such meeting in accordance with the articles of incorporation or the bylaws. At such meeting, the members may authorize such sale, lease, exchange, or other disposition and may approve or fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization requires at least a majority of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors may, in its discretion, abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating to such sale, lease, exchange, or other disposition, without further action or approval by members.

(2) If the corporation has no members or if its members are not entitled to vote thereon, a sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation may be authorized by a majority vote of the directors then in office.

## 617.1301 Prohibited distributions.—

Except as authorized in ss. 617.0505and 617.1302, a corporation may not make any distributions to its members.

## 617.1302 Authorized distributions.—

(1) A mutual benefit corporation may purchase its memberships pursuant to s. 617.0608 only if, after the purchase is completed:

(a) The mutual benefit corporation is able to pay its debts as they become due in the usual course of its activities; and

(b) The total assets of the mutual benefit corporation at least equal the sum of its total liabilities.

(2) A corporation may make distributions upon dissolution in conformity with the dissolution provisions of this chapter.

## 617.1401 Voluntary dissolution of corporation prior to conducting its affairs.——

(1) At any time after the filing of the articles of incorporation, a corporation which has not commenced to conduct its affairs may be voluntarily dissolved in the following manner:

(a) If there are no directors of the corporation, by the incorporator or, if there is more than one incorporator, by a majority of the incorporators; or

(b) If there are directors of the corporation, by a majority of the directors.

(2) Articles of dissolution must be executed in accordance with s. 617.01201 and must set forth:

(a) The name of the corporation;

(b) The date of filing of its articles of incorporation;

(c) That the corporation has not commenced to conduct its affairs;

(d) That no debts of the corporation remain unpaid; and

(e) That the incorporator or a majority of the incorporators or a majority of the directors, as the case may be, authorized the dissolution.

(3) The articles of dissolution must be filed and shall become effective in accordance with s. 617.1403, may be revoked in accordance with s. 617.1404, and shall have the effect prescribed in s. 617.1405.

## 617.1402 Dissolution of corporation.——

A corporation desiring to dissolve and wind up its affairs must adopt a resolution to dissolve in the following manner:

(1) If the corporation has members entitled to vote on a resolution to dissolve, and unless the board of directors determines that because of a conflict of interest or other substantial reason it should not make any recommendation, the board of directors must adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation must be given to each member entitled to vote at such meeting in accordance with the articles of incorporation or the bylaws. A resolution to dissolve the corporation shall be adopted upon receiving at least a majority of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If the corporation has no members or if its members are not entitled to vote on a resolution to dissolve, the dissolution of the corporation may be authorized at a meeting of the board of directors by a majority vote of the directors then in office.

## 617.1403 Articles of dissolution.——

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) If the corporation has members entitled to vote on dissolution, the date of the meeting of members at which the resolution to dissolve was adopted, a statement that the number of votes cast for dissolution was sufficient for approval, or a statement that such a resolution was adopted by written consent and executed in accordance with s. 617.0701; and

(c) If the corporation has no members or if its members are not entitled to vote on dissolution, a statement of such fact, the date of the adoption of such resolution by the board of directors, the number of directors then in office, and the vote for the resolution.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

## 617.1404 Revocation of dissolution.——

(1) A corporation may revoke its dissolution at any time prior to the expiration of 120 days following the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Department of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(e) If member action was required to revoke the dissolution, the information required by s. 617.1403(1)(b) or (c), whichever is applicable.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes conducting its affairs as if dissolution had never occurred.

## 617.1405 Effect of dissolution.——

(1) A dissolved corporation continues its corporate existence but may not conduct its affairs except to the extent appropriate to wind up and liquidate its affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind pursuant to the plan of distribution of assets adopted under s. 617.1406;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property in accordance with the plan of distribution of assets adopted under s. 617.1406; and

(e) Doing every other act necessary to wind up and liquidate its affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Subject its directors or officers to standards of conduct different from those which applied prior to dissolution;

(c) Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(d) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) Terminate the authority of the registered agent of the corporation.

(3) The directors, officers, and agents of a corporation dissolved pursuant to s. 617.1403 shall not incur any personal liability thereby by reason of their status as directors, officers, and agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.

(4) The name of a dissolved corporation is not available for assumption or use by another corporation until 120 days after the effective date of dissolution unless the dissolved corporation provides the department with an affidavit, executed pursuant to s. 617.01201, authorizing the immediate assumption or use of the name by another corporation.

## 617.1406 Plan of distribution of assets.——

A plan providing for the distribution of assets, not inconsistent with this act or the articles of incorporation, must be adopted by a corporation in the following manner:

(1) If the corporation has members entitled to vote on a plan of distribution of assets, the board of directors must adopt a resolution recommending a plan of distribution and directing its submission to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof must be given to each member entitled to vote at such meeting in accordance with the articles of incorporation or the bylaws. Such plan of distribution shall be adopted upon receiving at least a majority of the votes which the members present at such meeting or represented by proxy are entitled to cast.

(2) If the corporation has no members or if its members are not entitled to vote on a plan of distribution, such plan may be adopted at a meeting of the board of directors by a majority vote of the directors then in office.

(3) A plan of distribution of assets must provide that:

(a) All liabilities and obligations of the corporation be paid and discharged, or adequate provisions be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, be returned, transferred, or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, as provided in the plan of distribution of assets;

(d) Other assets, if any, be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or the bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

(e) Any remaining assets be distributed to such persons, trusts, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as specified in the plan of distribution of assets.

(4) A copy of the plan of distribution of assets, authenticated by an officer of the corporation and containing the officer's certificate of compliance with the requirements of subsection (1) or subsection (2) must be filed with the Department of State.

## 617.1407 Unknown claims against dissolved corporation.—

(1) A dissolved corporation or successor entity may execute one of the following procedures to resolve payment of unknown claims:

(a) A dissolved corporation or successor entity may file notice of its dissolution with the department on the form prescribed by the department and request that persons having claims against the corporation which are not known to the corporation or successor entity present them in accordance with the notice. The notice must:

1. State the name of the corporation and the date of dissolution;

2. Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

3. State that a claim against the corporation under this subsection is barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

(b) A dissolved corporation or successor entity may, within 10 days after filing articles of dissolution with the department, publish a “Notice of Corporate Dissolution.” The notice must appear once a week for 2 consecutive weeks in a newspaper of general circulation in the county in the state in which the corporation has its principal office, if any, or, if none, in a county in the state in which the corporation owns real or personal property. Such newspaper shall meet the requirements as are prescribed by law for such purposes. The notice must:

1. State the name of the corporation and the date of dissolution;

2. Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

3. State that a claim against the corporation under this subsection is barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice.

(2) If the dissolved corporation or successor entity complies with paragraph (1)(a) or paragraph (1)(b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 4 years after the date of filing the notice with the department or the date of the second consecutive weekly publication, as applicable:

(a) A claimant who did not receive written notice under s. 617.1408(9), or whose claim is not provided for under s. 617.1408(10), regardless of whether such claim is based on an event occurring before or after the effective date of dissolution.

(b) A claimant whose claim was timely sent to the dissolved corporation but on which no action was taken.

(3) A claim may be entered under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of such member’s pro rata share of the claim or the corporate assets distributed to such member in liquidation, whichever is less; however, the aggregate liability of any member of a dissolved corporation may not exceed the amount distributed to the member in dissolution.

## 617.1408 Known claims against dissolved corporation.—

(1) A dissolved corporation or successor entity may dispose of the known claims against it by following the procedures described in subsections (2), (3), and (4).

(2) The dissolved corporation or successor entity shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice must:

(a) Provide a reasonable description of the claim that the claimant may be entitled to assert;

(b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:

1. The amount that is admitted, which may be as of a given date; and

2. Any interest obligation if fixed by an instrument of indebtedness;

(c) Provide a mailing address where a claim may be sent;

(d) State the deadline, which must be at least 120 days after the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation or successor entity; and

(e) State that the corporation or successor entity may make distributions thereafter to other claimants and the members of the corporation or persons interested as having been such without further notice.

(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this section by mailing notice of such rejection to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. The notice must be accompanied by a copy of this section.

(4) A dissolved corporation or successor entity electing to follow the procedures described in subsections (2) and (3) must also give notice of dissolution to persons having known claims that are contingent upon the occurrence or nonoccurrence of future events, or are otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of the notice. The notice must be in substantially the same form, and sent in the same manner, as described in subsection (2).

(5) A dissolved corporation or successor entity shall offer any claimant whose known claim is contingent, conditional, or immature such security as the corporation or entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the corporation.

(6) A dissolved corporation or successor entity that has given notice in accordance with subsections (2) and (4) shall petition the circuit court in the county where the corporation’s principal office is located or was located on the effective date of dissolution to determine the amount and form of security which is sufficient to provide compensation to a claimant who has rejected the offer for security made pursuant to subsection (5).

(7) A dissolved corporation or successor entity that has given notice in accordance with subsection (2) shall petition the circuit court in the county where the corporation’s principal office is located or was located on the effective date of dissolution to determine the amount and form of security which is sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

(8) The giving of any notice or making of any offer pursuant to this section does not revive any claim then barred, does not constitute acknowledgment by the dissolved corporation or successor entity that any person to whom such notice is sent is a proper claimant, and does not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

(9) A dissolved corporation or successor entity that has followed the procedures described in subsections (2)-(7) shall:

(a) Pay the claims admitted or made and not rejected in accordance with subsection (3);

(b) Post the security offered and not rejected pursuant to subsection (5);

(c) Post any security ordered by the circuit court in any proceeding under subsections (6) and (7); and

(d) Pay or make provision for all other known obligations of the corporation or the successor entity. Such claims or obligations shall be paid in full, and any provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available for payment. Any remaining funds shall be distributed in accordance with s. 617.1406; however, such distribution may not be made until 150 days after the date of the last notice of rejections given pursuant to subsection (3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of the successor entity as to the provisions made for the payment of all obligations under this paragraph is conclusive.

(10) A dissolved corporation or successor entity that has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or the successor entity and all claims that are known to the dissolved corporation or the successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available for payment thereof. Any remaining funds shall be distributed in accordance with s. 617.1406.

(11) Directors of a dissolved corporation or governing persons of a successor entity that has complied with subsection (9) or subsection (10) are not personally liable to the claimants of the dissolved corporation.

(12) A member of a dissolved corporation the assets of which were distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the corporation greater than the member’s pro rata share of the claim or the amount distributed to the member, whichever is less.

(13) A member of a dissolved corporation, the assets of which were distributed pursuant to subsection (9), is not liable for any claim against the corporation which is known to the corporation or successor entity and on which a proceeding is begun after the expiration of 3 years following the effective date of dissolution.

(14) The aggregate liability of any member of a dissolved corporation for claims against the dissolved corporation may not be greater than the amount distributed to the member in dissolution.

## 617.1420 Grounds for administrative dissolution.——

(1) The Department of State may commence a proceeding under s. 617.1421 to administratively dissolve a corporation if:

(a) The corporation has failed to file its annual report and pay the annual report filing fee by 5 p.m. Eastern Time on the third Friday in September;

(b) The corporation is without a registered agent or registered office in this state for 30 days or more;

(c) The corporation does not notify the Department of State within 30 days after its registered agent or registered office has been changed, after its registered agent has resigned, or after its registered office has been discontinued;

(d) The corporation has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State; or

(e) The corporation's period of duration stated in its articles of incorporation has expired.

(2) The foregoing enumeration in subsection (1) of grounds for administrative dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a corporation for other causes as provided by law.

## 617.1421 Procedure for and effect of administrative dissolution.——

(1) If the Department of State determines that one or more grounds exist under s. 617.1420 for administratively dissolving a corporation, it shall serve the corporation with notice of its intent under s. 617.0504(2) to administratively dissolve the corporation, If the corporation has provided the department with an electronic mail address, such notice shall be by electronic transmission. Administrative dissolution for failure to file an annual report shall occur on the fourth Friday in September of each year. The Department of State shall issue a certificate of dissolution to each dissolved corporation. Issuance of the certificate of dissolution may be by electronic transmission to any corporation that has provided the department with an electronic mail address.

(2) If the corporation does not correct each ground for dissolution under s. 617.1420(1)(b), (c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the department does not exist within 60 days after issuance of the notice, the department shall administratively dissolve the corporation by issuing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate of dissolution may be by electronic transmission to any corporation that has provided the department with an electronic mail address.

(3) A corporation administratively dissolved continues its corporate existence but may not conduct any affairs except that necessary to wind up and liquidate its affairs under s. 617.1405 and adopt a plan of distribution of assets pursuant to s. 617.1406.

(4) A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or members subsequent to the reinstatement of the corporation.

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

## 617.1422 Reinstatement following administrative dissolution.—

(1) A corporation administratively dissolved under s. 617.1421 may apply to the department for reinstatement at any time after the effective date of dissolution. The corporation must submit a reinstatement form prescribed and furnished by the department or a current uniform business report signed by a registered agent and an officer or director and submit all fees owed by the corporation and computed at the rate provided by law at the time the corporation applies for reinstatement.

(2) If the department determines that the application contains the information required by subsection (1) and that the information is correct, it shall

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The name of the dissolved corporation is not available for assumption or use by another corporation until 1 year after the effective date of dissolution unless the dissolved corporation provides the department with an affidavit executed pursuant to s. 617.01201 authorizing the immediate assumption or use of the name by another corporation.

(5) If the name of the dissolved corporation has been lawfully assumed in this state by another corporation, the department shall require the dissolved corporation to amend its articles of incorporation to change its name before accepting its application for reinstatement.

## 617.1423 Appeal from denial of reinstatement.——

(1) If the Department of State denies a corporation's application for reinstatement following administrative dissolution, it shall serve the corporation under s. 617.0504(2) with a written notice that explains the reason or reasons for denial.

(2) After exhaustion of administrative remedies, the corporation may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68 within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the corporation's application for reinstatement, and the department's notice of denial.

(3) The court may summarily order the Department of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

## 617.1430 Grounds for judicial dissolution.——

A circuit court may dissolve a corporation:

(1) (a) In a proceeding by the Department of Legal Affairs if it is established that:

1. The corporation obtained its articles of incorporation through fraud; or

2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) The enumeration in paragraph (a) of grounds for judicial dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided by law.

(2) In a proceeding brought by at least 50 members or members holding at least 10 percent of the voting power, whichever is less, or by a member or group or percentage of members as otherwise provided in the articles of incorporation or bylaws, or by a director or any person authorized in the articles of incorporation, if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered;

(b) The members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(c) The corporate assets are being misapplied or wasted.

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

## 617.1431 Procedure for judicial dissolution.——

(1) Venue for a proceeding brought under s. 617.1430 lies in the circuit court of the county where the corporation's principal office is or was last located, as shown by the records of the Department of State, or, if none in this state, where its registered office is or was last located.

(2) It is not necessary to make members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the affairs of the corporation until a full hearing can be held.

## 617.1432 Receivership or custodianship.——

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint a natural person or a corporation authorized to act as a receiver or custodian. The corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

2. May sue and defend in his or her own name as receiver of the corporation in all courts of this state.

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation and its members and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

(6) The court may appoint an ancillary receiver for the assets and affairs of a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state, whenever the court deems that circumstances exist requiring the appointment of such a receiver. The court may appoint such an ancillary receiver for a foreign corporation even though a receiver has not been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when an order entered by a court of competent jurisdiction in the other state provides for a receivership of the corporation.

## 617.1433 Judgment of dissolution.——

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in s. 617.1430 exist, it may enter a judgment dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the judgment to the Department of State, which shall file it.

(2) After entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with ss. 617.1405 and 617.1406, subject to the provisions of subsection (3).

(3) In a proceeding for judicial dissolution, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months after the date of the order, as the last day for filing of claims. The court shall prescribe the deadline for filing claims that shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

## 617.1440 Deposit with Department of Financial Services.——

Assets of a dissolved corporation that should be transferred to a creditor, claimant, member of the corporation, or other person who cannot be found or who is not competent to receive them shall be deposited, within 6 months after the date fixed for the payment of the final liquidating distribution, with the Department of Financial Services, where such assets shall be held as abandoned property. When the creditor, claimant, member, or other person furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Financial Services shall pay him or his or her representative that amount or those assets.

## 617.1501 Authority of foreign corporation to conduct affairs required.——

(1) A foreign corporation may not conduct its affairs in this state until it obtains a certificate of authority from the Department of State.

(2) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (1):

(a) Maintaining, defending, or settling any proceeding.

(b) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.

(c) Maintaining bank accounts.

(d) Selling through independent contractors.

(e) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.

(f) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(g) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(h) Conducting its affairs in interstate commerce.

(i) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.

(j) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.

(k) Owning a limited partnership interest in a limited partnership that is doing business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner.

(l) Owning, without more, real or personal property.

(3) The list of activities in subsection (2) is not exhaustive.

(4) This section has no application to the question of whether any foreign corporation is subject to service of process and suit in this state under any law of this state.

## 617.1502 Consequences of conducting affairs without authority.——

(1) A foreign corporation conducting its affairs in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that conducted its affairs in this state without a certificate of authority and the assignee of a cause of action arising out of those affairs may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which conducts its affairs in this state without authority to do so shall be liable to this state for the years or parts thereof during which it conducted its affairs in this state without authority in an amount equal to all fees and taxes which would have been imposed by this act upon such corporation had it duly applied for and received authority to conduct its affairs in this state as required by this act. In addition to the payments thus prescribed, such corporation shall be liable for a civil penalty of not less than $500 or more than $1,000 for each year or part thereof during which it conducts its affairs in this state without a certificate of authority. The Department of State may collect all penalties due under this subsection.

(5) Notwithstanding subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any of its contracts, deeds, mortgages, security interests, or corporate acts or prevent it from defending any proceeding in this state.

## 617.1503 Application for certificate of authority.——

(1) A foreign corporation may apply for a certificate of authority to conduct its affairs in this state by delivering an application to the Department of State for filing. Such application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of s. 617.1506;

(b) The jurisdiction under the law of which it is incorporated;

(c) Its date of incorporation and period of duration;

(d) The purpose or purposes which it intends to pursue in this state and a statement that it is authorized to pursue such purpose or purposes in the jurisdiction of its incorporation;

(e) The street address of its principal office;

(f) The address of its registered office in this state and the name of its registered agent at that office;

(g) The names and usual business addresses of its current directors and officers; and

(h) Such additional information as may be necessary or appropriate in order to enable the Department of State to determine whether such corporation is entitled to file an application for authority to conduct its affairs in this state and to determine and assess the fees and taxes payable as prescribed in this act.

(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import duly authenticated, within 90 days prior to delivery of the application to the department, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated. A translation of the certificate, under oath of the translator, must be attached to a certificate that is in a language other than the English language.

(3) A foreign corporation may not be denied authority to conduct its affairs in this state by reason of the fact that the laws of the jurisdiction under which such corporation is organized governing its organization and internal affairs differ from the laws of this state.

## 617.1504 Amended certificate of authority.——

(1) A foreign corporation authorized to conduct its affairs in this state shall make application to the Department of State to obtain an amended certificate of authority if it changes:

(a) Its corporate name;

(b) The period of its duration;

(c) The purpose or purposes which it intends to pursue in this state; or

(d) The jurisdiction of its incorporation.

(2) Such application shall be made within 90 days after the occurrence of any change mentioned in subsection (1), shall be made on forms prescribed by the department, shall be executed and filed in the same manner as an original application for authority, and shall set forth:

(a) The name of the foreign corporation as it appears on the department’s records;

(b) The jurisdiction of its incorporation;

(c) The date it was authorized to conduct its affairs in this state;

(d) If the name of the foreign corporation has been changed, the name relinquished, the new name, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation, and the date the change was effected;

(e) If the period of duration has been changed, a statement of such change and the date the change was effected;

(f) If the jurisdiction of incorporation has been changed, a statement of such change and the date the change was effected; and

(g) If the purposes that the corporation intends to pursue in this state have changed, a statement of such new purposes, and a further statement that the corporation is authorized to pursue such purposes in the jurisdiction of its incorporation.

(3) The requirements of s. 617.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

## 617.1505 Effect of certificate of authority.——

(1) A certificate of authority authorizes the foreign corporation to which it is issued to conduct its affairs in this state subject, however, to the right of the Department of State to suspend or revoke the certificate as provided in this act.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct its affairs in this state.

## 617.1506 Corporate name of foreign corporation.——

(1) A foreign corporation may not file an application for a certificate of authority unless the corporate name of such corporation satisfies the requirements of s. 617.0401. To obtain or maintain a certificate of authority to transact business in this state, the foreign corporation:

(a) May add the word "corporation" or "incorporated" or the abbreviation "corp." or "inc." or words of like import, which clearly indicate that it is a corporation instead of a natural person or partnership or other business entity; however, the name of a foreign corporation may not contain the word "company" or the abbreviation "co."; or

(b) May use an alternate name to transact business in this state if its real name is unavailable. Any alternate corporate name adopted for use in this state must be cross-referenced to the real corporate name in the records of the Division of Corporations. If the real corporate name of the corporation becomes available in this state or if the corporation chooses to change its alternate name, a copy of the resolution of its board of directors, changing or withdrawing the alternate name and executed as required by s. 617.01201, must be delivered for filing.

(2) The corporate name, including the alternate name, of a foreign corporation must be distinguishable, within the records of the Division of Corporations, from:

(a) Any corporate name of a corporation for profit incorporated or authorized to transact business in this state.

(b) The alternate name of another foreign corporation authorized to transact business in this state.

(c) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(d) The names of all other entities or filings, except fictitious name registrations pursuant to s. 865.09, organized, or registered under the laws of this state, that are on file with the Division of Corporations.

(3) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of s. 617.0401, such corporation may not transact business in this state under the changed name until the corporation adopts a name satisfying the requirements of s. 617.0401.

## 617.1507 Registered office and registered agent of foreign corporation.——

(1) Each foreign corporation authorized to conduct its affairs in this state must continuously maintain in this state:

(a) A registered office that may be the same as any of the places it conducts its affairs; and

(b) A registered agent, who may be:

1. An individual who resides in this state and whose business office is identical with the registered office;

2. Another domestic entity that is an authorized entity whose businessvaddress is identical to the address of the registered office; or

3. A foreign entity authorized to trqansact business in this state that is an authorized entity and whose business address is identical to the address of the registered office

(2) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 617.1508 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

(3) For purposes of this section, “authorized entity” means:

(a) A corporation for profit;

(b) A limited liability company;

(c) A limited liability partnership; or

(d) A limited partnership, including a limited liability limited partnership.

## 617.1508 Change of registered office and registered agent of foreign corporation.——

(1) A foreign corporation authorized to conduct its affairs in this state may change its registered office or registered agent by delivering to the Department of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;

(f) That, after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical; and

(g) That any such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the corporation has been notified of the change.

## 617.1509 Resignation of registered agent of foreign corporation.——

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Department of State for filing a statement of resignation and mailing a copy of such statement to the corporation at the corporation's principal office address shown in its most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

(2) The agency appointment is terminated as of the 31st day after the date on which the statement was filed and, unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

## 617.1510 Service of process, notice, or demand on a foreign corporation.—

(1) The registered agent of a foreign corporation authorized to conduct its affairs in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from conducting its affairs in this state under s. 617.1520; or

(c) Has had its certificate of authority revoked under s. 617.1531.

(3) Service is perfected under subsection (2) at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. Process against any foreign corporation may also be served in accordance with chapter 48 or chapter 49.

(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made in accordance with the procedures for notice to or demand on domestic corporations under s. 617.0504.

## 617.1520 Withdrawal of foreign corporation.——

(1) A foreign corporation authorized to conduct its affairs in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Department of State.

(2) A foreign corporation authorized to conduct its affairs in this state may apply for a certificate of withdrawal by delivering an application to the Department of State for filing. The application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

(a) The name of the foreign corporation and the jurisdiction under the law of which it is incorporated;

(b) That it is not conducting its affairs in this state and that it surrenders its authority to conduct its affairs in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Department of State as its agent for service of process based on a cause of action arising during the time it was authorized to conduct its affairs in this state;

(d) A mailing address to which the Department of State may mail a copy of any process served on it under paragraph (c); and

(e) A commitment to notify the Department of State in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Department of State under this section is service on the foreign corporation. Upon receipt of the process, the Department of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

## 617.1530 Grounds for revocation of authority to conduct affairs.——

The Department of State may commence a proceeding under s. 617.1531 to revoke the certificate of authority of a foreign corporation authorized to conduct its affairs in this state if:

(1) The foreign corporation has failed to file its annual report with the Department of State by 5 p.m. Eastern Time on the third Friday in September.

(2) The foreign corporation does not pay, within the time required by this act, any fees, taxes, or penalties imposed by this act or other law.

(3) The foreign corporation is without a registered agent or registered office in this state for 30 days or more.

(4) The foreign corporation does not notify the Department of State under s. 617.1508 or s. 617.1509 that its registered agent has resigned or that its registered office has been discontinued within 30 days after the date of such resignation or discontinuance.

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

(6) The department receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the jurisdiction under the law of which the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(7) The foreign corporation has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State.

## 617.1531 Procedure for and effect of revocation.——

(1) If the Department of State determines that one or more grounds exist under s. 617.1530 for revocation of a certificate of authority, the Department of State shall serve the foreign corporation with notice of its intent to revoke the foreign corporation’s certificate of authority. If the foreign corporation has provided the department with an electronic mail address, such notice shall be by electronic transmission. Revocation for failure to file an annual report shall occur on the fourth Friday in September of each year. The Department of State shall issue a certificate of revocation to each revoked corporation. Issuance of the certificate of revocation may be by electronic transmission to any foreign corporation that has provided the department with an electronic mail address.

(2) If the foreign corporation does not correct each ground for revocation under s. 617.1530(2)-(7) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the Department of State does not exist within 60 days after issuance of notice the Department of State shall revoke the foreign corporation's certificate of authority by issuing a certificate of revocation that recites the ground or grounds for revocation and its effective date. Issuance of the certificate of revocation may be by electronic transmission to any foreign corporation that has provided the department with an electronic mail address.

(3) The authority of a foreign corporation to conduct its affairs in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

## 617.1532 Appeal from revocation.——

(1) If the Department of State revokes the authority of any foreign corporation to conduct its affairs in this state pursuant to the provisions of this act, such foreign corporation may likewise appeal to the circuit court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its application for authority to conduct its affairs in this state and a copy of the certificate of revocation given by the Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court deems proper.

(2) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Department of State may be taken as in other civil actions.

## 617.1533 Reinstatement following revocation.——

(1) (a) A foreign corporation whose certificate of authority has been revoked under s. 617.1531 may apply to the Department of State for reinstatement at any time after the effective date of revocation of authority. The application must:

1. Recite the name of the corporation and the effective date of its revocation of authority;

2. State that the ground or grounds for revocation either did not exist or have been eliminated and that no further grounds currently exist for revocation of authority;

3. State that the corporation's name satisfies the requirements of s. 617.1506; and

4. State that all fees owned by the corporation and computed at the rate provided by law at the time the corporation applies for reinstatement have been paid; or

(b) In the alternative, the foreign corporation may submit a current annual report, signed by the registered agent and an officer or director, which substantially complies with the requirements of paragraph (a).

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall file the document, cancel the certificate of revocation of authority, and reinstate the foreign corporation effective on the date on which the reinstatement document is filed.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of authority and the foreign corporation resumes carrying on its affairs as if the revocation of authority has never occurred.

(4) The name of the foreign corporation whose certificate of authority has been revoked shall not be available for assumption or use by another corporation until 1 year after the effective date of revocation of authority unless the corporation provides the Department of State with an affidavit executed as required by s. 617.01201 permitting the immediate assumption or use of the name by another corporation.

(5) If the name of the foreign corporation has been lawfully assumed in this state by another corporation, the Department of State shall require the foreign corporation to comply with s. 617.1506 before accepting its application for reinstatement.

## 617.1601 Corporate records.——

(1) A corporation shall keep as records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain accurate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by class of voting members.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records:

(a) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect.

(b) Its bylaws or restated bylaws and all amendments to them currently in effect.

(c) The minutes of all members' meetings and records of all action taken by members without a meeting for the past 3 years.

(d) Written communications to all members generally or all members of a class within the past 3 years, including the financial statements furnished for the past 3 years under s. 617.1605.

(e) A list of the names and business street, or home if there is no business street, addresses of its current directors and officers.

(f) Its most recent annual report delivered to the Department of State under s. 617.1622.

## 617.1602 Inspection of records by members.——

(1) A member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office or at a reasonable location specified by the corporation,, any of the records of the corporation described in s. 617.1601(5), if the member gives the corporation written notice of his or her demand at least 10 business days before the date on which he or she wishes to inspect and copy.

(2) A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 10 business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection (1).

(b) Accounting records of the corporation.

(c) The record of members.

(d) Any other books and records.

(3) A member may inspect and copy the records described in subsection (2) only if:

(a) The member’s demand is made in good faith and for a proper purpose;

(b) The member describes with reasonable particularity his or her purpose and the records he or she desires to inspect;

(c) The records are directly connected with the member’s purpose.

(4) This section does not affect:

(a) The right of a member in litigation with the corporation to inspect and copy records, to the same extent as any other litigant.

(b) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(5) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding member has within 2 years preceding his or her demand sold or offered for sale any list of members of the corporation or any other corporation, has aided or abetted any person in procuring any list of members for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

(6) For purposes of this section, the term "member" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

(7) For purposes of this section, a "proper purpose" means a purpose reasonably related to such person's interest as a member.

## 617.1603 Scope of inspection right.——

(1) A member's agent or attorney has the same inspection and copying rights as the member he or she represents.

(2) The right to copy records under s. 617.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records. If the records are kept in other than written form, the corporation shall convert such records into written form upon the request of any person entitled to inspect the same. The corporation shall bear the costs of converting any records described in s. 617.1601(5). The requesting member shall bear the costs, including the cost of compiling the information requested, incurred to convert any records described in s. 617.1602(2).

(4) If requested by a member, the corporation shall comply with a member's demand to inspect the records of members under s. 617.1602(2)(c) by providing him with a list of its members of the nature described in s. 617.1601(3). Such a list shall be compiled as of the last record date for which it has been compiled or as of a subsequent date if specified by the member.

## 617.1604 Court-ordered inspection.——

(1) If a corporation does not, within a reasonable time, allow a member to inspect and copy any record, and the member complies with any prerequisites to inspection and copying imposed by this section, the member may apply to the circuit court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited summary basis.

(2) If the court orders inspection or copying of the records demanded, it shall also order the corporation and the custodian of the particular records demanded to pay the member's costs, including reasonable attorney fees, reasonably incurred to obtain the order and enforce its rights under this section unless the corporation, or the officer, director, or agent, as the case may be, provides that it or he or she refused inspection in good faith because it or he or she had a reasonable basis for doubt about the right of the member to inspect or copy the records demanded.

(3) If the court orders inspection or copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

## 617.1605 Financial reports for members.——

A corporation, upon a member’s written demand, shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, and which include a balance sheet as of the end of the fiscal year and a statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on such basis.

## 617.1606 Access to records.—

Sections 617.1601-617.1605 do not apply to a corporation that is an association, as defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719.

## 617.1622 Annual report for Department of State.——

(1) Each domestic and each foreign corporation authorized to conduct its affairs in this state shall deliver to the Department of State for filing a sworn annual report, on such form as the Department of State prescribes, that sets forth:

(a) The name of the corporation and the state or country under the law of which it is incorporated;

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in this state;

(c) The address of the principal office and the mailing address of the corporation;

(d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;

(e) The names and business street addresses of its directors and principal officers;

(f) The street address of its registered office in this state and the name of its registered agent at that office; and

(g) Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

(2) The deposit of such report, on or before May 1, in the United States mail in a sealed envelope, properly addressed with postage prepaid, constitutes compliance with subsection (1).

(3) If an annual report does not contain the information required by subsection (1), the Department of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by subsection (1) and delivered to the Department of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(4) Each annual report must be executed by the corporation by an officer or director or, if the corporation is in the hands of a receiver or trustee, must be executed on behalf of the corporation by such receiver or trustee, and the signing of the annual report shall have the same legal effect as if made under oath, without the necessity of appending such oath thereto.

(5) The first annual report must be delivered to the Department of State between January 1 and May 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to conduct affairs. Subsequent annual reports must be delivered to the Department of State between January 1 and May 1 of the subsequent calendar years.

(6) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(7) If an additional report is received, the department shall file the document and make the information contained therein part of the official record.

(8) Any corporation that fails to file an annual report which complies with the requirements of this section may not maintain or defend any action in any court of this state until such report

is filed and all fees and taxes due under this act are paid, and such corporation is subject to dissolution or cancellation of its certificate of authority to conduct its affairs as provided in this act.

(9) The department shall prescribe the forms on which to make the annual report called for in this section and may substitute the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this section.

## 617.1623 Corporate information available to the public; application to corporations incorporated by circuit courts and by special act of the Legislature.——

(1) (a) Each corporation incorporated in this state shall maintain a registered agent and registered office in accordance with s. 617.0501, and current information regarding the corporations incorporated in this state shall be readily available to the public. At a minimum, such information must include the text of the charter or articles of incorporation and all amendments thereto, the name of the corporation, the date of incorporation, the street address of the principal office of the corporation, the corporation's federal employer identification number, the name and business street address of each officer, the name and business street address of each director, the name of its registered agent, and the street address of its registered office.

(b) Any corporation which has a charter approved by a circuit judge under former chapter 617, Florida Statutes 1989, or a charter granted by the Legislature on or before September 1, 1959, the effective date of chapter 59—427, Laws of Florida, must file with the Department of State, not later than July 1, 1992, a copy of its charter and all amendments thereto, certified by the clerk of the circuit court of the county wherein recorded, together with a registration containing the provisions required in paragraph (a), as to charters and amendments granted by circuit judges, and by the Department of State, as to legislative charters, and the corporation thereafter shall be subject to the requirements of ss. 617.0501 and 617.1622.

(c) Any such corporation which fails to comply with paragraph (b), and is not exempt from the requirements thereof pursuant to subsection (2), is, as of July 2, 1992, dissolved and thereafter may not maintain or defend any action in any of the courts in this state.

(d) Any corporation dissolved pursuant to paragraph (c) shall be reinstated upon application to the Department of State, signed by an officer or director thereof, accompanied by a copy of its charter and all amendments thereto, certified by the clerk of the circuit court of the county wherein recorded, as to charters and amendments granted by circuit judges, and by the Department of State, as to legislative charters, together with a registration containing the provisions required in paragraph (a), and the payment of all fees due from the time of dissolution computed at the rate provided by law at the time the corporation applies for reinstatement.

(e) Whenever the application for reinstatement is approved and filed by the Department of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution. The reinstatement terminates any personal liability of the directors, officers, or agents of the corporation incurred on account of actions taken during the period between dissolution and reinstatement. Upon reinstatement, the corporation shall be subject to the requirements of ss. 617.0501 and 617.1622.

(2) Any corporation which has reincorporated under s. 617.0901 or former s. 617.012, Florida Statutes 1989, is exempt from the requirements of this section.

## 617.1701 Application to existing domestic corporation.——

This act applies to all domestic corporations in existence on July 1, 1991, that were incorporated under any general statute of this state providing for incorporation of corporations not for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

## 617.1702 Application to qualified foreign corporations.——

A foreign corporation authorized to conduct its affairs in this state on July 1, 1991, is subject to this act but is not required to obtain a new certificate of authority to conduct its affairs under this act.

## 617.1703 Application of chapter.—

In the event of any conflict between the provisions of this chapter and chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners’ associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile home owners’ associations, the provisions of such other chapters shall apply. The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

## 617.1711 Application to foreign and interstate commerce.——

The provisions of this act apply to commerce with foreign nations and among the several states only insofar as such commerce may be permitted under the Constitution and laws of the United States.

## 617.1803 Domestication of foreign not-for-profit corporations.—

(1) As used in this section, the term “not-for-profit corporation” includes any not-for-profit incorporated organization.

(2) Any foreign not-for-profit corporation may become domesticated in this state by filing with the Department of State:

(a) A certificate of domestication, executed in accordance with subsection (7) and filed in accordance with s. 617.01201; and

(b) Articles of incorporation, executed and filed in accordance with ss. 617.01201 and 617.0202.

(3) The certificate of domestication shall certify:

(a) The date on which the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being;

(b) The name of the corporation immediately before the filing of the certificate of domestication;

(c) The name of the corporation, as set forth in its articles of incorporation; and

(d) The jurisdiction that constituted the seat, siege, social, or principal place of business or central administration of the corporation, or any other equivalent jurisdiction under applicable law, immediately before the filing of the certificate of domestication.

(4) Upon filing the certificate of domestication and articles of incorporation, the corporation shall be domesticated in this state and shall thereafter be subject to this section, except that notwithstanding s. H[617.0203](http://www.flsenate.gov/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0617/Sec0203.htm&StatuteYear=2001)H, the existence of the corporation shall be deemed to have commenced on the date it commenced its existence in the jurisdiction in which it was first formed, incorporated, or otherwise came into being.

(5) The domestication of any not-for-profit corporation in this state does not affect any obligations or liabilities that it incurred before its domestication.

(6) The filing of a certificate of domestication does not affect the choice of law applicable to the corporation, except that, after the date the certificate of domestication is filed, the law of this state, applies to the corporation to the same extent as if it had been incorporated as a not-for-profit corporation of this state on that date.

(7) The certificate of domestication shall be signed by any corporate officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director, however named or described, who is authorized to sign the certificate of domestication on behalf of the corporation.

(8) When a domestication becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the foreign corporation remains in the domesticated corporation without reversion or impairment;

(b) The liabilities of the foreign corporation remain the liabilities of the domesticated corporation;

(c) An action or proceeding against the foreign corporation continues against the domesticated corporation as if the domestication had not occurred;

(d) The articles of incorporation attached to the certificate of domestication constitute the articles of incorporation of the domesticated corporation; and

(e) Membership interests in the foreign corporation remain identical in the domesticated corporation.

## 617.1805 Corporations for profit; when may become corporations not for profit.—

Any corporation for profit incorporated under any of the laws of the state, engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized under state law to carry out, may change its corporate nature from a corporation for profit to that of a corporation not for profit as defined in this act, by filing a petition in the circuit court of the county wherein its principal place of business is located in the name of the corporation signed by an officer of the corporation and under its corporate seal setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed. However, any corporation for profit, which has transferred, or is in the process of transferring, its functions and assets to a corporation not for profit by proceedings under this act shall, upon the recital of the facts, circumstances, and intentions surrounding such transfer proceedings in a petition filed in accordance with s. 617.1806, and the subsequent approval thereof by the circuit judge to whom presented, be deemed to have acted under this act and such corporation not for profit shall succeed to the rights, liabilities, and assets of its corporate predecessor.

## 617.1806 Conversion to corporation not for profit; petition and contents.——

A petition for conversion to a corporation not for profit pursuant to s.617.1805 shall be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file such petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities and the proposed articles of incorporation signed by the president and secretary of the petitioning corporation which shall set forth the provisions required in original articles of incorporation by s. 617.0202.

## 617.1807 Conversion to corporation not for profit; authority of circuit judge.—

If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, he or she shall approve the articles of incorporation and endorse his or her approval thereon; such approval shall provide that all of the property of the petitioning corporation shall become the property of the successor corporation not for profit, subject to all indebtedness and liabilities of the petitioning corporation. The articles of incorporation with such endorsements thereupon shall be sent to the Department of State, which shall, upon receipt thereof and upon payment of all taxes due the state by the petitioning corporation, if any, issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of the filing fees specified in s. 617.0122, the Department of State shall file the articles of incorporation, and from thenceforth the petitioning corporation shall become a corporation not for profit under the name adopted in the articles of incorporation and subject to all the rights, powers, immunities, duties, and liabilities of corporations not for profit under state law, and its rights, powers, immunities, duties, and liabilities as a corporation for profit shall cease and determine.

## 617.1808 Application of act to corporation converted to corporation not for profit.——

All the provisions of this act relating to corporations not for profit, except insofar as they are inconsistent with ss. 617.1805, 617.1806, and 617.1807, shall be applicable to any corporation whose character has been changed under ss. 617.1805, 617.1806, and 617.1807 and shall henceforth govern such corporation.

## 617.1809 Limited agricultural association; conversion to a domestic corporation not for profit.—

(1) As used in this section, the term “limited agricultural association” or “association” means a limited agricultural association formed under ss. 604.09-604.14.

(2) A limited agricultural association may convert to a domestic corporation not for profit by filing the following documents with the department in accordance with s. 617.01201:

(a) A certificate of conversion, which must be executed by a person authorized in s. 617.01201(6) and such other persons that may be required in the association’s articles of association or bylaws.

(b) Articles of incorporation, which must comply with s. 617.0202 and be executed by a person authorized in s. [617.01201](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0617/Sections/0617.01201.html)(6).

(3) The certificate of conversion must include:

(a) The date upon which the association was initially formed under ss. 604.09-604.14.

(b) The name of the association immediately before filing the certificate of conversion.

(c) The name of the domestic corporation as set forth in its articles of incorporation.

(d) The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion, subject to the limitation in s. 617.0123(2), must be a date certain and the same as the effective date of the articles of incorporation.

(4) When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the association is converted to the domestic corporation, and the corporation becomes subject to this chapter. However, notwithstanding s. 617.0123, the existence of the corporation is deemed to have commenced when the association was initially formed under ss. 604.09-604.14.

(5) Conversion of a limited agricultural association to a domestic corporation does not affect any obligation or liability of the association that was incurred before the conversion.

(6) When a conversion takes effect under this section, all rights, privileges, and powers of the converting association, all property, real, personal, and mixed, and all debts due to the association, as well as all other assets and causes of action belonging to the association, are vested in the domestic corporation to which the association is converted and are the property of the corporation as they were of the association. The title to any real property that is vested by deed or otherwise in the converting association does not revert and is not impaired by the operation of this chapter, but all rights of creditors and all liens upon any property of the association are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

(7) The limited agricultural association is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute a dissolution of the association but is a continuation of the association’s existence in the form of the domestic corporation.

(8) Before a limited agricultural association may file a certificate of conversion with the department, unless otherwise specified in the association’s articles of association or bylaws, the conversion must be approved by a majority vote of the association’s members, and the articles of incorporation must be approved by the same authorization required for approval of the conversion. As part of the approval, the converting association may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record may also contain other provisions relating to the conversion, including, but not limited to, the right of the converting association to abandon the proposed conversion or an effective date for the conversion that is consistent with paragraph (3)(d).

## 617.1901 Corporations Trust Fund.——

Repealed.

## 617.1904 Estoppel.——

No body of persons acting as a corporation shall be permitted to set up the lack of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up the lack of such legal organization in his or her defense.

## 617.1907 Effect of repeal or amendment of prior acts.——

(1) Except as provided in subsection (2), the repeal or amendment of a statute by this chapter does not affect:

(a) The operation of the statute or any action taken under it before its repeal or amendment;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal or amendment;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced before its repeal or amendment, and the proceeding, reorganization, or dissolution may be completed as if it had not been repealed or amended.

(2) If a penalty or punishment imposed for violation of a statute repealed or amended by this chapter is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

## 617.1908 Applicability of Business Corporation Act.——

Except as made applicable by specific reference in any other section of this chapter, part I of chapter 607, the Florida Business Corporation Act, does not apply to any corporations not for profit.

## 617.2001 Corporations which may be incorporated hereunder; incorporation of certain medical services corporations.——

(1) Corporations may be organized and incorporated under this act for any one or more lawful purposes not for pecuniary profit. However, corporations not for profit which may be incorporated under any other law of this state governing particular types of corporations may not be incorporated under this act.

(2) A corporation not for profit organized prior to December 1, 1987, pursuant to the provisions of chapter 85—56, Laws of Florida, or to the provisions of s. 2 of chapter 87—296, Laws of Florida, may conduct the practice of medicine, conduct programs of medical education, and carry on major medical research efforts.

## 617.2002 Corporation not for profit organized pursuant to s. 2, ch. 87—296; requirements.——

A corporation not for profit organized pursuant to the provisions of s. 2 of chapter 87—296, Laws of Florida, must meet the following requirements:

(1) At least 25 percent of its physicians must have a full-time contract for the provision of medical services with the corporation, be currently certified as specialists by the appropriate American specialty boards accredited by the Council on Medical Education of the American Medical Association, and have clinical privileges at one or more hospitals in this state.

(2) A hospital owned by a corporation organized pursuant to s. 2 of chapter 87—296, Laws of Florida, must provide Medicaid and charity care.

## 617.2003 Proceedings to revoke articles of incorporation or charter or prevent its use.——

If any member or citizen complains to the Department of Legal Affairs that any corporation organized under this act was organized or is being used as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, or that an officer or director of a corporation has participated in a sale or transaction that is affected by a conflict of interest or from which he or she derived an improper personal benefit, either directly or indirectly, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the department shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the articles of incorporation or charter, to prevent its improper use, or to recover on behalf of the corporation or its unknown beneficiaries any profits improperly received by the corporation or its officers or directors.

## 617.2004 Extinct churches and religious societies; property.——

Property, both real and personal, belonging to or held in trust for any church or any religious society belonging to any religious denomination in this state that has or shall become extinct, shall vest in and become the property of that denomination of which such church or religious society is a member. However, this section shall not affect the title to any property that is now held by any of the denominational associations or organizations of the state, and this section shall not affect the reversionary interest of any person in such property or any valid lien thereon.

## 617.2005 Extinct churches and religious societies; dissolution.—

Any church or religious society in this state which has ceased or failed to maintain religious worship or service or to use its property for religious worship or services according to the tenets, usages and customs of a church of the denomination of which it is a member in this state for the space of 2 consecutive years or whose membership has so diminished in numbers or in financial strength as to render it impossible for such church or society to maintain religious worship or services or to protect its property from exposure to waste and dilapidation for a period of 2 years, shall be extinct. Upon the facts being established to the satisfaction of the circuit court in and for the county in which such church has been situated, an order of such court may be made dissolving the church or religious society and the property of such church or society or the property which may be transferred to and the title and possession thereof vested in the denomination of which such church or society was a member. A copy of the decree of dissolution shall be filled with the Department of State.

## 617.2006 Incorporation of labor unions or bodies.——

Any group or combination of groups of workers or wage earners, bearing the name labor, organized labor, federation of labor, brotherhood of labor, union labor, union labor committee, trade union, trades union, union labor council, building trades council, building trades union, allied trades union, central labor body, central labor union, federated trades council, local union, state union, national union, international union, district labor council, district labor union, American Federation of Labor, Florida Federation of Labor, or any component parts or significant words of such terms, whether the same be used in juxtaposition or with interspace, may be incorporated under this act.

(1) In addition to the requirements of ss. 617.02011 and 617.0202, the articles of incorporation for a labor union or body shall set forth the necessity for the incorporation, shall be subscribed to by not less than five persons, and shall be acknowledged by all of the subscribers, who shall also make and subscribe to an oath, to be endorsed on the articles of incorporation, that it is intended in good faith to carry out the purposes and objects set forth in the articles of incorporation. The articles of incorporation shall be filed in the office of the clerk of the circuit court of the county in which the labor union or body is organized, and the approval of the judge of the circuit court shall be obtained.

(2) The subscribers of the articles of incorporation shall give notice of their intention to obtain approval thereof by the circuit judge. Such notice shall state the name of the judge, the date the articles of incorporation will be presented, and the general nature and necessity of the articles of incorporation. Notice shall be published in a newspaper of general circulation in the county in which the labor union or body is organized at least once, or posted at the courthouse door in counties having no newspapers, at least 10 days prior to the date the articles of incorporation will be presented to the judge.

(3) When presented to the judge, the articles of incorporation shall be accompanied by a petition, signed and sworn to by the subscribers, stating fully the aims and purposes of such organization and the necessity therefor.

(4) Upon the filing of the articles of incorporation and the petition, and the giving of such notice, the circuit judge to whom such petition may be addressed shall, upon the date stated in such notice, take testimony and inquire into the admissions and purposes of such organization and the necessity therefor, and upon such hearing, if the circuit judge shall be satisfied that the allegations set forth in the petition and articles of incorporation have been substantiated, and shall find that such organization will not be harmful to the community in which it proposes to operate, or to the state, and that it is intended in good faith to carry out the purposes and objects set forth in the articles of incorporation, and that there is a necessity therefor, the judge shall approve the articles of incorporation and endorse his or her approval thereon. Upon the filing of the articles of incorporation with its endorsements thereupon with the Department of State and payment of the filing fees specified in s. 617.0122, the subscribers and their associates and successors shall be a corporation by the name given.

(5) Any person may intervene by filing an answer to the petition stating his or her reasons, if any, and be heard thereon, why the circuit judge shall not approve the articles of incorporation.

(6) The existence, amendment of the articles of incorporation, and dissolution of any such corporation shall be in accordance with this act.

## 617.2007 Sponge packing and marketing corporations.——

Persons engaged in the business of buying, selling, packing, and marketing commercial sponges may incorporate under this act to aid in facilitating the orderly cooperative buying, selling, packing, and marketing of commercial sponges. Such association is not a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or fix prices arbitrarily, and any marketing contract or agreement by the corporation and its members, or the exercise of any power granted by this act is not illegal or in restraint of trade.

## 617.2101 Corporation authorized to act as trustee.——

Any corporation, organized under this act, may act as trustee of property whenever the corporation has either a beneficial, contingent, or remainder interest in such property. Any corporation may accept and hold the legal title to property, the beneficial interest of which is owned by any other eleemosynary institution or nonprofit corporation or fraternal, benevolent, charitable, or religious society or association.

## 617.2102 Fines and penalties against members.——

A corporation may, if so authorized in the bylaws, levy fines or otherwise penalize members of the corporation. No fine or penalty shall be levied until after the corporation has provided notice thereof to the members concerned and has afforded the member an opportunity to be heard on the matter. The foregoing notice and hearing shall not be required as to the levy of a late fee for nonpayment of dues.

**617.221 Membership associations.—**

(1) As used in this section, the term “membership association” means a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2), operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The term does not include a labor organization as defined in s. 447.02 or an entity funded through the Justice Administrative Commission.

(2) Dues paid to a membership association which are paid with public funds shall be assessed for each elected or appointed public officer and may be paid to a membership association. If a public officer elects not to join the membership association, the dues assessed to that public officer may not be paid to the membership association.

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## 713.001 Short title of part.——

This part may be cited as the "Construction Lien Law."

## 713.01 Definitions.——

As used in this part, the term:

(1) "Abandoned property” means all tangible personal property that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition.

(2) Architect" means a person or firm that is authorized to practice architecture pursuant to chapter 481 or a general contractor who provides architectural services under a design-build contract authorized by s. 481.229(3).

(3) "Claim of lien " means the claim recorded as provided in s. 713.08.

(4) "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located.

(5) "Commencement of the improvement" means the time of filing for record of the notice of commencement provided in s. 713.13.

(6) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders.

(7) "Contract price" means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and must be increased or diminished by the price of extras or change orders, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor diminishes the contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term means the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as provided in this subsection. Allowance items are a part of the contract when accepted by the owner.

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16).

(9) "Direct contract" means a contract between the owner and any other person.

(10) "Engineer" means a person or firm that is authorized to practice engineering pursuant to chapter 471 or a general contractor who provides engineering services under a design-build contract authorized by s. 471.003(2)(i).

(11) "Extras or change orders" means labor, services, or materials for improving real property authorized by the owner and added to or deleted from labor, services, or materials covered by a previous contract between the same parties.

(12) “Final furnishing” means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienor’s previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.

(13) "Furnish materials" means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement, not including any design work, submittals, or the like preliminary to actual fabrication of the materials; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying rental equipment, but does not include supplying handtools. The delivery of materials to the site of the improvement is prima facie evidence of incorporation of such materials in the improvement. The delivery of rental equipment to the site of the improvement is prima facie evidence of the period of the actual use of the rental equipment from the delivery through the time the equipment is last available for use at the site, or 2 business days after the lessor of the rental equipment receives a written notice from the owner or the lessee of the rental equipment to pick up the equipment, whichever occurs first.

(14) "Improve" means build, erect, place, make, alter, remove, repair, or demolish any improvement over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the furnishing of carpet or rugs or appliances that are permanently affixed to the real property and final construction cleanup to prepare a structure for occupancy; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus or provide any solid-waste collection or disposal on the site of the improvement.

(15) "Improvement" means any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

(16) "Laborer" means any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(17) "Lender" means any person who loans money to an owner for construction of an improvement to real property, who secures that loan by recording a mortgage on the real property, and who periodically disburses portions of the proceeds of that loan for the payment of the improvement.

(18) "Lienor" means a person who is:

(a) A contractor;

(b) A subcontractor;

(c) A sub-subcontractor;

(d) A laborer;

(e) A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or

(f) A professional lienor under s. 713.03; and who has a lien or prospective lien upon real property under this part, and includes his or her successor in interest. No other person may have a lien under this part.

(19) "Lienor giving notice" means any lienor, except a contractor, who has duly and timely served a notice to the owner and, if required, to the contractor and subcontractor, as provided in s. 713.06(2).

(20) "Materialman" means any person who furnishes materials under contract to the owner, contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(21) "Notice by lienor" means the notice to owner served as provided in s. 713.06(2).

(22) "Notice of commencement" means the notice recorded as provided in s. 713.13.

(23) "Owner" means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term includes a condominium association pursuant to chapter 718 as to improvements made to association property or common elements. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity.

(24) "Perform" or "furnish" when used in connection with the words "labor" or "services" or "materials" means performance or furnishing by the lienor or by another for him or her.

(25) "Post" or "posting" means placing the document referred to on the site of the improvement in a conspicuous place at the front of the site and in a manner that protects the document from the weather.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

(27) "Site of the improvement" means the real property which is being improved and on which labor or services are performed or materials furnished in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel, or tract of land to another, this term means the real property to which the improvement is removed.

(28) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in s. 443.101.

(29) "Sub-subcontractor" means a person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in s. 443.101.

## 13.012 Written notices, demands, or requests.—

Notices, demands, or requests permitted or required under this part, except any required by s. 713.14, must be in writing.

## 713.015 Mandatory provisions for direct contracts.— contains 2005 General Laws

(1) Any direct contract greater than $2,500 between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units, must contain the following notice provision printed in no less than 12- point capitalized, boldfaced type on the front page of the contract or on a separate page, signed by the owner and dated:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A “NOTICE TO OWNER.” FLORIDA'S  
 CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

(2) (a) If the contract is written, the notice must be in the contract document. If the contract is oral or implied, the notice must be provided in a document referencing the contract.

(b) The failure to provide such written notice does not bar the enforcement of a lien against a person who has not been adversely affected.

(c) Nothing in This section may not shall be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner. This section does not apply when the owner is a contractor licensed under chapter 489 or is a person who created parcels or offers parcels for sale or lease in the ordinary course of business.

## 713.015 Mandatory provisions for direct contracts.—

Any direct contract between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units, must contain the following provision printed in no less than 18-point, capitalized, boldfaced type:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

## 713.02 Types of lienors and exemptions.— contains 2005 General Laws

(1) Persons performing the services described in s. 713.03 shall have rights to a lien on real property as provided in that section.

(2) Persons performing services or furnishing materials for subdivision improvements as described in s. 713.04 shall have rights to a lien on real property as provided in that section.

(3) Persons who are in privity with an owner and who perform labor or services or furnish materials constituting an improvement or part thereof shall have rights to a lien on real property as provided in s. 713.05.

(4) Persons who are not in privity with an owner and who perform labor or services or furnish materials constituting a part of an improvement under the direct contract of another person shall have rights to a lien on real property as provided in s. 713.06.

(5) Any improvement for which the direct contract price is $2,500 or less shall be exempt from all other provisions of this part except the provisions of s. 713.05.

(6) In any direct contract the owner may require the contractor to furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner shall be exempt from the other provisions of this part as to that direct contract, but this does not exempt the owner from the lien of the contractor who furnishes the bond. If the bond is provided, it shall secure all liens subsequently accruing under this part as provided in s. 713.23.

(7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor who is unlicensed as provided in s. 489.128 or s. 489.532. Notwithstanding any other provision of this part, if a contract is rendered unenforceable by an unlicensed contractor, subcontractor, or sub-subcontractor pursuant to s. 489.128 or s. 489.532, such unenforceability shall not affect the rights of any other persons to enforce contract, lien, or bond remedies and shall not affect the obligations of a surety that has provided a bond on behalf of the unlicensed contractor, subcontractor, or sub-subcontractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed as provided in s. 489.128 or s. 489.532.

## 713.02 Types of lienors and exemptions.—

(1) Persons performing the services described in s. 713.03 shall have rights to a lien on real property as provided in that section.

(2) Persons performing services or furnishing materials for subdivision improvements as described in s. 713.04 shall have rights to a lien on real property as provided in that section.

(3) Persons who are in privity with an owner and who perform labor or services or furnish materials constituting an improvement or part thereof shall have rights to a lien on real property as provided in s. 713.05.

(4) Persons who are not in privity with an owner and who perform labor or services or furnish materials constituting a part of an improvement under the direct contract of another person shall have rights to a lien on real property as provided in s. 713.06.

(5) Any improvement for which the direct contract price is $2,500 or less shall be exempt from all other provisions of this part except the provisions of s. 713.05.

(6) The owner and contractor may agree that the contractor shall furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner is exempt from the other provisions of this part as to that direct contract, but this does not exempt the owner from the lien of the contractor who furnishes the bond. If the bond is provided, it shall secure all liens subsequently accruing under this part as provided in s. 713.23.

(7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor who is unlicensed as provided in s. 489.128 or s. 489.532.

## 713.03 Liens for professional services.—

(1) Any person who performs services as architect, landscape architect, interior designer, engineer, or surveyor and mapper, subject to compliance with and the limitations imposed by this part, has a lien on the real property improved for any money that is owing to him or her for his or her services used in connection with improving the real property or for his or her services in supervising any portion of the work of improving the real property, rendered in accordance with his or her contract and with the direct contract.

(2) Any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and who in the practice of his or her profession shall perform services, by himself or herself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved.

(3) No liens under this section shall be acquired until a claim of lien is recorded. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2) or an affidavit concerning unpaid lienors as provided in s. 713.06(3).

## 713.04 Subdivision improvements.— contains 2005 General Laws

(1) Any lienor who, regardless of privity, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that is owed to her or him for her or his services or materials furnished in accordance with her or his contract and the direct contract. The total amount of liens allowed under this section shall not exceed the amount of the direct contract under which the lienor furnishes labor, materials, or services. The work of making real property suitable as the site of an improvement shall include but shall not be limited to the grading, leveling, excavating, and filling of land, including the furnishing of fill soil; the grading and paving of streets, curbs, and sidewalks; the construction of ditches and other area drainage facilities; the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes; and the construction of canals and shall also include the altering, repairing, and redoing of all these things. When the services or materials are placed on land dedicated to public use and are furnished under contract with the owner of the abutting land, the cost of the services and materials, if unpaid, may be the basis for a lien upon the abutting land. When the services or materials are placed upon land under contract with the owner of the land who subsequently dedicates parts of the land to public use, the person furnishing the services or materials placed upon the dedicated land shall be entitled to a lien upon the land abutting the dedicated land for the unpaid cost of the services and materials placed upon the dedicated land, or in the case of improvements that serve or benefit real property that is divided by the improvements, to a lien upon each abutting part for the equitable part of the full amount due and owing. If the part of the cost to be borne by each parcel of the land subject to the same lien is not specified in the contract, it shall be prorated equitably among the parcels served or benefited. No lien under this section shall be acquired until a claim of lien is recorded. No notice of commencement shall be filed for liens under this section. No lienor shall be required to serve a notice to owner for liens under this section.

(2) If a lienor under this section who is not in privity with the owner serves a notice on the owner in accordance with the provisions of s. 713.06(2), payment of lienors by the owner under this section shall be governed by s. 713.06(3)(c), (d), (e), (f), (g), (h), and (4).

(3) The owner shall not pay any money on account of a direct contract before actual furnishing of labor and services or materials for subdivision improvements. Any The payment not complying with such requirement shall not qualify as a proper payment under this chapter section.

(4) The owner shall make final payment on account of a direct contract only after the contractor complies with s. 713.06(3)(d). Any payment not complying with such requirement shall not qualify as a proper payment under this chapter.

## 713.05 Liens of persons in privity.—

A materialman or laborer, either of whom is in privity with the owner, or a contractor who complies with the provisions of this part shall, subject to the limitations thereof, have a lien on the real property improved for any money that is owed to him or her for labor, services, materials, or other items required by, or furnished in accordance with, the direct contract and for unpaid finance charges due under the lienor's contract. A materialman or laborer, in privity with the owner, or a contractor shall also have a lien on the owner's real property for any money that is owed to him or her for labor, services, or materials furnished to improve public property if the improvements to the public property are a condition of the permit to improve the owner's real property. No lien under this section shall be acquired until a claim of lien is recorded. A lienor who, as a subcontractor, sub-subcontractor, laborer, or materialman not in privity with the owner, commences to furnish labor, services, or material to an improvement and who thereafter becomes in privity with the owner shall have a lien for any money that is owed to him or her for the labor, services, or materials furnished after he or she becomes in privity with the owner. A lienor may record one claim of lien to cover both his or her work done in privity with the owner and not in privity with the owner. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2). A lienor, except a laborer or materialman, who is in privity with the owner and claims a lien under this section shall furnish the contractor's affidavit required in s. 713.06(3)(d). A contractor may claim a lien for any labor, services, or materials furnished by another lienor for which he or she is obligated to pay the lienor, regardless of the right of the lienor to claim a lien; but, if the lienor claims a valid lien, the contractor shall not recover the amount of the lien recovered by the lienor, and the amount of the contractor's claim of lien may be reduced accordingly by court order. No person shall have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

## 713.06 Liens of persons not in privity; proper payments.—

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, has a lien on the real property improved for any money that is owed to him or her for labor, services, or materials furnished in accordance with his or her contract and with the direct contract and for any unpaid finance charges due under the lienor's contract. A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, also has a lien on the owner's real property for labor, services, or materials furnished to improve public property if the improvement of the public property is furnished in accordance with his or her contract and with the direct contract. The total amount of all liens allowed under this part for furnishing labor, services, or material covered by any certain direct contract must not exceed the amount of the contract price fixed by the direct contract except as provided in subsection (3). No person may have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

(2) (a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, must serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be served before commencing, or not later than 45 days after commencing, to furnish his or her labor, services, or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give to the lienor serving the notice any priority over other lienors in the same category; and the failure to serve the notice, or to timely serve it, is a complete defense to enforcement of a lien by any person. The serving of the notice does not dispense with recording the claim of lien. The notice is not a lien, cloud, or encumbrance on the real property nor actual or constructive notice of any of them.

(b) If the owner, in his or her notice of commencement, has designated a person in addition to himself or herself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall serve a copy of his or her notice on the person so designated. The failure by the lienor to serve such copy, however, does not invalidate an otherwise valid lien.

(c) The notice may be in substantially the following form and must include the information and the warning contained in the following form:

WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL. UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE. TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR. NOTICE TO OWNER

To ~(Owner's name and address)~

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

(General description of services or materials)~ for the improvement of the real property identified as ~(property description)~ under an order given by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF:

--RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

--LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

~(Lienor's Signature)~

~(Lienor's Name)~

~(Lienor's Address)~

Copies to: ~(Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)~

The form may be combined with a notice to contractor given under s. 255.05 or s. 713.23 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

(d) A notice to an owner served on a lender must be in writing, must be served in accordance with s. 713.18, and shall be addressed to the persons designated, if any, and to the place and address designated in the notice of commencement. Any lender who, after receiving a notice provided under this subsection, pays a contractor on behalf of the owner for an improvement shall make proper payments as provided in paragraph (3)(c) as to each such notice received by the lender. The failure of a lender to comply with this paragraph renders the lender liable to the owner for all damages sustained by the owner as a result of that failure. This paragraph does not give any person other than an owner a claim or right of action against a lender for the failure of the lender to comply with this paragraph. Further, this paragraph does not prohibit a lender from disbursing construction funds at any time directly to the owner, in which event the lender has no obligation to make proper payments under this paragraph.

(e) A lienor, in the absence of a recorded notice of commencement, may rely on the information contained in the building permit application to serve the notice prescribed in paragraphs (a), (b), and (c).

(f) If a lienor has substantially complied with the provisions of paragraphs (a), (b), and (c), errors or omissions do not prevent the enforcement of a claim against a person who has not been adversely affected by such omission or error. However, a lienor must strictly comply with the time requirements of paragraph (a).

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(a) If the description of the property in the notice prescribed by s. 713.13 is incorrect and the error adversely affects any lienor, payments made on the direct contract shall be held improperly paid to that lienor; but this does not apply to clerical errors when the description listed covers the property where the improvements are.

(b) The owner may pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and covered by the direct contract, and shall deduct the same from the balance due the contractor under a direct contract.

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2., the sum then due to each lienor giving notice prior to the time of the payment. The owner may require, and, in such event, the contractor shall furnish as a prerequisite to requiring payment to himself or herself, an affidavit as prescribed in subparagraph (d)1., on any payment made, or to be made, on a direct contract, but the furnishing of the affidavit shall not relieve the owner of his or her responsibility to pay or cause to be paid all lienors giving notice. The owner shall be under no obligation to any lienor, except laborers, from whom he or she has not received a notice to owner at the time of making a payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors giving notice pro rata in the manner prescribed in subsection (4). Lienors receiving money shall execute partial releases, as provided in s. 713.20(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services, or materials, the owner may pay the bills in full direct to the person or firm to which they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay the bills and shall deduct the amounts so paid from the balance of payment due the contractor. This subparagraph shall not create any obligation of the owner to pay any person who is not a lienor giving notice.

4. No person furnishing labor or material, or both, who is required to serve a notice under paragraph (2)(a) and who did not serve the notice and whose time for service has expired shall be entitled to be paid by the owner because he or she is listed in an affidavit furnished by the contractor under subparagraph (c)1.

5. If the contract is terminated before completion, the contractor shall comply with subparagraph (d)1.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner a final payment affidavit stating, if that be the fact, that all lienors under his or her direct contract who have timely served a notice to owner on the owner and the contractor have been paid in full or, if the fact be otherwise, showing the name of each such lienor who has not been paid in full and the amount due or to become due each for labor, services, or materials furnished. The affidavit must be in substantially the following form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

State of Florida County of \_\_\_\_\_ Before me, the undersigned authority, personally appeared ~(name of affiant)~, who, after being first duly sworn, deposes and says of his or her personal knowledge the following:

1. He or she is the ~(title of affiant)~, of ~(name of contractor's business)~, which does business in the State of Florida, hereinafter referred to as the "Contractor."

2. Contractor, pursuant to a contract with ~(name of owner)~, hereinafter referred to as the "Owner," has furnished or caused to be furnished labor, materials, and services for the construction of certain improvements to real property as more particularly set forth in said contract.

3. This affidavit is executed by the Contractor in accordance with section 713.06 of the Florida Statutes for the purposes of obtaining final payment from the Owner in the amount of $\_\_\_\_\_.

4. All work to be performed under the contract has been fully completed, and all lienors under the direct contract have been paid in full, except the following listed lienors:

NAME OF LIENOR\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_AMOUNT DUE

Signed, sealed, and delivered this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

By ~(name of affiant)~

~(title of affiant)~

~(name of contractor's business)~

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ by ~(name of affiant)~, who is personally known to me or produced \_\_\_\_\_ as identification, and did take an oath.

~(name of notary public)~

Notary Public

My Commission Expires:

~(date of expiration of commission)~

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The contractor shall have no lien or right of action against the owner for labor, services, or materials furnished under the direct contract while in default for not giving the owner the affidavit; however, the negligent inclusion or omission of any information in the affidavit which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien. The contractor shall execute the affidavit and deliver it to the owner at least 5 days before instituting an action as a prerequisite to the institution of any action to enforce his or her lien under this chapter, even if the final payment has not become due because the contract is terminated for a reason other than completion and regardless of whether the contractor has any lienors working under him or her or not.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services, or materials, the owner may, after giving the contractor at least 10 days' written notice, pay such bills in full direct to the person or firm to which they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor. Lienors listed in said affidavit not giving notice, whose 45-day notice time has not expired, shall be paid in full or pro rata, as appropriate, from any balance then remaining due the contractor; but no lienor whose notice time has expired shall be paid by the owner or by any other person except the person with whom that lienor has a contract.

3. If the balance due is not sufficient to pay in full all lienors listed in the affidavit and entitled to payment from the owner under this part and other lienors giving notice, the owner shall pay no money to anyone until such time as the contractor has furnished him or her with the difference; however, if the contractor fails to furnish the difference within 10 days from delivery of the affidavit or notice from the owner to the contractor to furnish the affidavit, the owner shall determine the amount due each lienor and shall disburse to them the amounts due from him or her on a direct contract in accordance with the procedure established by subsection (4).

4. The owner shall have the right to rely on the contractor's affidavit given under this paragraph in making the final payment, unless there are lienors giving notice who are not listed in the affidavit. If there are lienors giving notice who are not so listed, the owner may pay such lienors and any persons listed in the affidavit that are entitled to be paid by the owner under subparagraph 2. and shall thereupon be discharged of any further responsibility under the direct contract, except for any balance that may be due to the contractor.

5. The owner shall retain the final payment due under the direct contract that shall not be disbursed until the contractor's affidavit under subparagraph 1. has been furnished to the owner.

6. When final payment has become due to the contractor and the owner fails to withhold as required by subparagraph 5., the property improved shall be subject to the full amount of all valid liens of which the owner has notice at the time the contractor furnishes his or her affidavit.

(e) If the improvement is abandoned before completion, the owner shall determine the amount due each lienor giving notice and shall pay the same in full or prorate in the same manner as provided in subsection (4).

(f) No contractor shall have any right to require the owner to pay any money to him or her under a direct contract if such money cannot be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor except the contractor or any laborer, the owner shall give the contractor at least 10 days' written notice of his or her intention to do so, and the amount he or she proposes to pay each lienor.

(h) When the owner has properly retained all sums required in this section to be retained but has otherwise made improper payments, the owner's real property shall be liable to all laborers, subcontractors, sub-subcontractors, and materialmen complying with this chapter only to the extent of the retentions and the improper payments, notwithstanding the other provisions of this subsection. Any money paid by the owner on a direct contract, the payment of which is proved to have caused no detriment to any certain lienor, shall be held properly paid as to the lienor, and if any of the money shall be held not properly paid as to any other lienors, the entire benefit of its being held not properly paid as to them shall go to the lienors.

(4) (a) In determining the amounts for which liens between lienors claiming under a direct contract shall be paid by the owner or allowed by the court within the total amount fixed by the direct contract and under the provisions of this section, the owner or court shall pay or allow such liens in the following order:

1. Liens of all laborers.

2. Liens of all persons other than the contractor.

3. Lien of the contractor.

(b) Should the total amount for which liens under such direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all liens in a class shall be allowed for their full amounts before any liens shall be allowed to any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the total amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed only in the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services, or materials shall be allowed only in the lien of the lienor farthest removed from the contractor. This section shall not be construed to affect the priority of liens derived under separate direct contracts.

## 713.07 Priority of liens.—

(1) Liens under ss. 713.03 and 713.04 shall attach at the time of recordation of the claim of lien and shall take priority as of that time.

(2) Liens under ss. 713.05 and 713.06 shall attach and take priority as of the time of recordation of the notice of commencement, but in the event a notice of commencement is not filed, then such liens shall attach and take priority as of the time the claim of lien is recorded.

(3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.

(4) If construction ceases or the direct contract is terminated before completion and the owner desires to recommence construction, he or she may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his or her intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

## 713.08 Claim of lien.— contains 2005 General Laws

(1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom she or he was employed.

(c) The claim of lien shall be served on the owner. The labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials and for unpaid finance charges due under the lienor's contract.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.

(2) The claim of lien may be prepared by the lienor or the lienor’s employee or attorney and shall be signed and sworn to or affirmed by the lienor or the lienor’s agent acquainted with the facts stated therein.

(3) The claim of lien shall be sufficient if it is in substantially the following form, and includes the following warning:

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of \_\_\_\_\_ County of \_\_\_\_\_

Before me, the undersigned notary public, personally appeared \_\_\_\_\_, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein \_\_\_\_\_), whose address is \_\_\_\_\_; and that in accordance with a contract with \_\_\_\_\_, lienor furnished labor, services, or materials consisting of \_\_\_\_\_ on the following described real property in \_\_\_\_\_ County, Florida:

(Legal description of real property)

owned by \_\_\_\_\_ of a total value of $\_\_\_\_\_, of which there remains unpaid $\_\_\_\_\_, and furnished the first of the items on \_\_\_\_\_, ~(year)~, and the last of the items on \_\_\_\_\_, ~(year)~; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_; and (if required) that the lienor served copies of the notice on the contractor on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_ and on the subcontractor, \_\_\_\_\_, on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_.

~(Signature)~

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

However, the negligent inclusion or omission of any information in the claim of lien which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien.

(4) (a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this part may be amended at any time during the period allowed for recording such claim of lien, provided that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as provided for recording the original claim of lien.

(c) Failure to serve any claim of lien in the manner provided in s. 713.18 before recording or within 15 days after recording shall render the claim of lien voidable to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on the service.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor. However, if the original contractor defaults or the contract is terminated under s. 713.07(4), a claim for a lien attaching prior to such termination may not be recorded after 90 days following the date of such termination or 90 days after the final furnishing of labor, services, or materials by the lienor, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

## 713.08 Claim of lien.—

(1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom she or he was employed.

(c) The labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials and for unpaid finance charges due under the lienor's contract.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.

(2) The claim of lien shall be signed and verified by the lienor or her or his agent acquainted with the facts stated therein.

(3) The claim of lien shall be sufficient if it is in substantially the following form, and includes the following warning:

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of \_\_\_\_\_ County of \_\_\_\_\_

Before me, the undersigned notary public, personally appeared \_\_\_\_\_, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein \_\_\_\_\_), whose address is \_\_\_\_\_; and that in accordance with a contract with \_\_\_\_\_, lienor furnished labor, services, or materials consisting of \_\_\_\_\_ on the following described real property in \_\_\_\_\_ County, Florida:

(Legal description of real property)

owned by \_\_\_\_\_ of a total value of $\_\_\_\_\_, of which there remains unpaid $\_\_\_\_\_, and furnished the first of the items on \_\_\_\_\_, ~(year)~, and the last of the items on \_\_\_\_\_, ~(year)~; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_; and (if required) that the lienor served copies of the notice on the contractor on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_ and on the subcontractor, \_\_\_\_\_, on \_\_\_\_\_, ~(year)~, by \_\_\_\_\_.

~(Signature)~

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

However, the negligent inclusion or omission of any information in the claim of lien which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien.

(4) (a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this part may be amended at any time during the period allowed for recording such claim of lien, provided that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as provided for recording the original claim of lien.

(c) Failure to serve any claim of lien in the manner provided in s. 713.18 before recording or within 15 days after recording shall render the claim of lien voidable to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on the service.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor; or, with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use; provided if the original contractor defaults or the contract is terminated under s. 713.07(4), no claim for a lien attaching prior to such default shall be recorded after 90 days from the date of such default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. The time period for recording a claim of lien shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

## 713.09 Single claim of lien.—

A lienor is required to record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land under one direct contract are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. In each claim of lien under this section, the owner under the direct contract must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

## 713.10 Extent of liens.—

(1) Except as provided in s. 713.12, a lien under this part shall extend to, and only to, the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor.

(2) (a) When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making any such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor.

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

A notice that is consistent with subparagraph 2. effectively prohibits liens for improvements made by a lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the application of liens are not identical.

(3) Any contractor or lienor under contract to furnish labor, services, or materials for improvements being made by a lessee may serve written demand on the lessor for a copy of the provision in the lease prohibiting liability for improvements made by the lessee, which copy shall be verified under s. 92.525. The demand must identify the lessee and the premises being improved and must be in a document that is separate from the notice to the owner as provided in s. 713.06(2). The interest of any lessor who does not serve a verified copy of the lease provision within 30 days after demand, or who serves a false or fraudulent copy, is subject to a lien under this part by the contractor or lienor who made the demand if the contractor or lienor has otherwise complied with this part and did not have actual notice that the interest of the lessor was not subject to a lien for improvements made by the lessee. The written demand must include a warning in conspicuous type in substantially the following form:

WARNING

YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

## 713.11 Liens for improving land in which the contracting party has no interest.—

When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in s. 713.12, but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he or she has performed labor or services or for which he or she has furnished materials. The court, in the enforcement of such lien, may order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored substantially to its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

## 713.12 Liens for improving real property under contract with husband or wife on property of the other or of both.—

When the contract for improving real property is made with a husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or by both, the spouse who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title, or interest of the other in said property to liens under this part unless such other shall, within 10 days after learning of such contract, give the contractor and record in the clerk's office, notice of his or her objection thereto.

## 713.13 Notice of commencement.—

(1) (a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(b) The owner, at his or her option, may designate a person in addition to himself or herself to receive a copy of the lienor's notice as provided in s. 713.06(2)(b), and if he or she does so, the name and address of such person must be included in the notice of commencement.

(c) If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.

(d) A notice of commencement must be in substantially the following form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Permit No.\_\_\_\_\_

Tax Folio No.\_\_\_\_\_

NOTICE OF COMMENCEMENT

State of\_\_\_\_\_ County of\_\_\_\_\_ The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ~(legal description of the property, and street address if available)~.

2. General description of improvement:

3. Owner information or Lessee information if the Lessee contracted for the improvement:\_\_\_\_\_.

a. Name and address:\_\_\_\_\_.

b. Interest in property:\_\_\_\_\_.

c. Name and address of fee simple titleholder (if different from Owner listed above:\_\_\_\_\_.

4.a. Contractor: ~(name and address)~.

b. Contractor's phone number:\_\_\_\_\_.

5. Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:\_\_\_\_\_.

b. Phone number:\_\_\_\_\_.

c. Amount of bond: $\_\_\_\_\_.

6.a. Lender: ~(name and address)~.

b. Lender's phone number:\_\_\_\_\_.

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:

a. Name and address: . . .

b. Phone numbers of designated persons:\_\_\_\_\_.

8.a. In addition to himself or herself, Owner designates \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:\_\_\_\_\_.

9. Expiration date of notice of commencement (the expiration date will be 1 year from the date of recording unless a different date is specified)\_\_\_\_\_.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART 1, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

(Signature of Owner or Lessee, or Owner’s or Lessee’s Authorized Officer/Director/Partner/Manager)

(Signatory’s Title/Office)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, (year), by (name of person) as for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public – State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_

Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(e) A copy of any payment bond must be attached at the time of recordation of the notice of commencement. The failure to attach a copy of the bond to the notice of commencement when the notice is recorded negates the exemption provided in s. [713.02](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.02.html)(6). However, if a payment bond under s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html) exists but was not attached at the time of recordation of the notice of commencement, the bond may be used to transfer any recorded lien of a lienor except that of the contractor by the recordation and service of a notice of bond pursuant to s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html)(2). The notice requirements of s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html) apply to any claim against the bond; however, the time limits for serving any required notices shall, at the option of the lienor, be calculated from the dates specified in s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html) or the date the notice of bond is served on the lienor.

(f) The giving of a notice of commencement is effective upon the filing of the notice in the clerk's office.

(g) The owner must sign the notice of commencement and no one else may be permitted to sign in his or her stead.

(2) If the improvement described in the notice of commencement is not actually commenced within 90 days after the recording thereof, such notice is void and of no further effect.

(3) The recording of a notice of commencement does not constitute a lien, cloud, or encumbrance on real property, but gives constructive notice that claims of lien under this part may be recorded and may take priority as provided in s. 713.07. The posting of a copy does not constitute a lien, cloud, or encumbrance on real property, nor actual or constructive notice of any of them.

(4) This section does not apply to an owner who is constructing improvements described in s. 713.04.

(5) Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.

(6) A lender must, prior to the disbursement of any construction funds to the contractor, record the notice of commencement in the clerk's office as required by this section; however, the lender is not required to post a certified copy of the notice at the construction site. The posting of the notice at the construction site remains the owner's obligation. The failure of a lender to record the notice of commencement as required by this subsection renders the lender liable to the owner for all damages sustained by the owner as a result of the failure. Whenever a lender is required to record a notice of commencement, the lender shall designate the lender, in addition to others, to receive copies of notices to owner. This subsection does not give any person other than the owner a claim or right of action against a lender for failure to record a notice of commencement.

## 713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The recording office document book and page reference numbers and date of the notice of commencement;

(c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;

(e) A statement that all lienors have been paid in full; and

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(2) An owner has the right to rely on a contractor's affidavit given under s. 713.06(3)(d), except with respect to lienors who have already given notice, in connection with the execution, swearing to, and recording of a notice of termination. However, the notice of termination must be accompanied by the contractor's affidavit.

(3) An owner may not record a notice of termination except after completion of construction, or after construction ceases before completion and all lienors have been paid in full or pro rata in accordance with s. 713.06(4). If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, as the case may be, is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination; and any such lienor has a right of action for damages occasioned thereby.

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.

## 713.135 Notice of commencement and applicability of lien.—

(1) When any person applies for a building permit, the authority issuing such permit shall:

(a) Print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and post a copy of the notice of commencement in accordance with s. 713.13. The statement must also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice as provided in s. 713.06(2) and an explanation of the owner's rights as provided in s. 713.22. The authority that issues the building permit must obtain from the Department of Business and Professional Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver that statement to the owner or, in a case in which the owner is required to personally appear to obtain the permit, provide that statement to any owner making improvements to real property consisting of a single or multiple family dwelling up to and including four units. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

(c) In addition to providing the owner with the statement as required by paragraph (b), inform each applicant who is not the person whose right, title, and interest is subject to attachment that, as a condition to the issuance of a building permit, the applicant must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13. If the direct contract is greater than $2,500, the applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such certified copy with the issuing authority. The certified copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application. The issuing authority shall provide the recording information on the certified copy of the recorded notice of commencement to any person upon request. This subsection does not require the recording of a notice of commencement prior to the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a certified copy of a recorded notice of commencement or a notarized statement regarding a recorded notice of commencement. This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $7,500.

(e) Not require that a notice of commencement be recorded as a condition of the application for or processing or issuance of a building permit. However, this paragraph does not modify or waive the inspection requirements set forth in this subsection.

(2) An issuing authority under subsection (1) is not liable in any civil action for the failure of the person whose property is subject to attachment to receive or to be delivered a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law.

(3) An issuing authority under subsection (1) is not liable in any civil action for the failure to verify that a certified copy of the recorded notice of commencement has been filed in accordance with this section.

(4) The several boards of county commissioners, municipal councils, or other similar bodies may by ordinance or resolution establish reasonable fees for furnishing copies of the forms and the printed statement provided in paragraphs (1)(b) and (d) in an amount not to exceed $5 to be paid by the applicant for each permit in addition to all other costs of the permit; however, no forms or statement need be furnished, mailed, or otherwise provided to, nor may such additional fee be obtained from, applicants for permits in those cases in which the owner of a legal or equitable interest (including that of ownership of stock of a corporate landowner) of the real property to be improved is engaged in the business of construction of buildings for sale to others and intends to make the improvements authorized by the permit on the property and upon completion will offer the improved real property for sale.

(5) In addition to any other information required by the authority issuing the permit, each building permit application must contain:

(a) The name and address of the owner of the real property;

(b) The name and address of the contractor;

(c) A description sufficient to identify the real property to be improved; and

(d) The number or identifying symbol assigned to the building permit by the issuing authority, which number or symbol must be affixed to the application by the issuing authority.

(6) (a) In addition to any other information required by the authority issuing the permit, the building permit application must be in substantially the following form:

##### Building Permit Application

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tax Folio No.\_\_\_\_\_\_\_\_\_\_

BUILDING PERMIT APPLICATION

Owner's Name

County\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Description

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION.

IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

~(Signature of Owner or Agent)~

~(including contractor)~

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

~(Signature of Contractor)~

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Certificate of Competency Holder)

Contractor's State Certification or Registration No.\_\_\_\_\_

Contractor's Certificate of Competency No.\_\_\_\_\_\_\_\_\_\_

APPLICATION APPROVED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Permit Officer

(b) 1. Consistent with the requirements of paragraph (a), an authority responsible for issuing building permits under this section may accept a building permit application in an electronic format, as prescribed by the authority. Building permit applications submitted to the authority electronically must contain the following additional statement in lieu of the requirement in paragraph (a) that a signed, sworn, and notarized signature of the owner or agent and the contractor be part of the owner’s affidavit:

OWNER’S ELECTRONIC SUBMISSION STATEMENT: Under penalty of perjury, I declare that all the information contained in this building permit application is true and correct.

2. For purposes of implementing a “United States Department of Energy SunShot Initiative: Rooftop Solar Challenge” grant and the participation of county and municipal governments, including local permitting agencies under the jurisdiction of such county and municipal governments, an owner or contractor shall not be required to personally appear and provide a notarized signature when filing a building permit application, if such building permit application will be electronically submitted to the permitting authority, the application relates to a solar project, and the owner or contractor certifies the application, consistent with this paragraph, using the permitting authority’s electronic confirmation system. For purposes of this subsection, a “solar project” means installing, uninstalling, or replacing solar panels on single-family residential property, multifamily residential property, or commercial property.

(c) An authority responsible for issuing building permit applications which accepts building permit applications in an electronic format shall provide public Internet access to the electronic building permit applications in a searchable format.

(d) An authority responsible for issuing building permits which accepts building permit applications in an electronic format for solar projects, as defined in subparagraph (b)2., is not liable in any civil action for any inaccurate information submitted by an owner or contractor using the authority’s electronic confirmation system.

(7) This section applies to every municipality and county in the state which now has or hereafter may have a system of issuing building permits for the construction of improvements or for the alteration or repair of improvements on or to real property located within the geographic limits of the issuing authority.

## 713.14 Application of money to materials account.—

(1) Any owner, contractor, subcontractor, or sub-subcontractor, in making any payment under, or properly applicable to, any contract to one with whom she or he has a running account, or with whom she or he has more than one contract, or to whom she or he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied. If she or he shall fail to do so or shall make a false designation, she or he shall be liable to anyone suffering a loss in consequence for the amount of the loss.

(2) When a payment for materials is made to a subcontractor, sub-subcontractor, or materialman, the subcontractor, sub-subcontractor, or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply. In any case in which a lien is claimed for materials furnished by a subcontractor, sub-subcontractor, or materialman, it is a defense to the claim, to the extent of the payment made, to prove that a payment made by the owner to the contractor for the materials has been paid over to the subcontractor, sub-subcontractor, or materialman, and to prove also that when such payment was received by such subcontractor, sub-subcontractor, or materialman she or he did not demand a designation of the account and of the items of account to which the payment was to be applied or, receiving a designation of its application to the account for the materials, she or he failed to apply the payment in accordance therewith. This subsection is cumulative to any other defenses available to the person paying the materialman, subcontractor, or sub-subcontractor.

## 713.15 Repossession of materials not used.—

If for any reason the completion of an improvement is abandoned or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he or she has not received payment may peaceably repossess and remove such materials or replevy the same and thereupon he or she shall have no lien on the real property or improvements and no right against any persons for the price thereof, but shall have the same rights in regard to the materials as if he or she had never parted with their possession. This right to repossess and remove or replevy the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of improvement, except that if the materials have been so transferred, the right to repossess or replevy them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein is acquired after such transfer from the site of the improvement or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

## 713.16 Demand for copy of contract and statements of account; form.—

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby has a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his or her damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand is binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents must pay for the reproduction thereof; and, if such person fails or refuses to do so, he or she is entitled only to inspect such documents at reasonable times and places.

(2) The owner may serve in writing a demand of any lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner served by such lienor and must include a description of the property and the names of the owner, the contractor, and the lienor’s customer, as set forth in the lienor’s notice to owner. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement under oath within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor’s last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being enforced through a foreclosure case filed before the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

##### REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: ~(Lienor's name and address)~

The undersigned hereby demands a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as ~(property description)~.

… (name of contractor)…

…(name of the lienor’s customer, as set forth in the lienor’s Notice to Owner, if such notice has been served.

~(signature and address of owner)~

~(date of request for sworn statement of account)~

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by such lienor. The demand must include a description of the property and the names of the owner, the contractor, and the lienor’s customer, as set forth in the lienor’s notice to contractor. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her rights under the bond. The negligent inclusion or omission of any information deprives the person of his or her rights under the bond to the extent the contractor can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed prior to the date the demand for statement of account is received by the lienor.

(5) (a) Any lienor who is perfecting a claim of lien may serve with the claim of lien or thereafter a written demand on the owner for a written statement under oath showing:

1. The amount of the direct contract under which the lien was recorded;

2. The dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in the direct contract;

3. The reasonable estimated costs of completing the direct contract under which the lien was claimed pursuant to the scope of the direct contract; and

4. If known, the actual cost of completion.

(b) Any owner who does not provide the statement within 30 days after demand, or who provides a false or fraudulent statement, is not a prevailing party for purposes of an award of attorney fees under s. 713.29. The written demand must include the following warning in conspicuous type in substantially the following form:

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

(6) Any written demand served on the owner must include a description of the property and the names of the contractor and the lienor’s customer, as set forth in the lienor’s notice to owner.

(7) For purposes of this section, the term "information" means the nature and quantity of the labor, services, and materials furnished or to be furnished by a lienor and the amount paid, the amount due, and the amount to become due on the lienor's account.

## 713.165 Request for list of subcontractors and suppliers.—

(1) An owner of real property may request from the contractor a list of all subcontractors and suppliers who have any contract with the contractor to furnish any material or to perform any service for the contractor with respect to the owner's real property or improvement to the real property. The request must be in writing and delivered by registered or certified mail to the address of the contractor shown in the contract or the recorded notice of commencement.

(2) The contractor must within 10 days after receipt of the property owner's written request, furnish to the property owner or the property owner's agent a list of the subcontractors and suppliers who have a contract with the contractor as of the date the request is received by the contractor. If the contractor fails to furnish the list, the contractor thereby forfeits the contractor's right to assert a lien against the owner's property to the extent the owner is prejudiced by the contractor's failure to furnish the list or by any omissions from the list.

(3) A list furnished under this section shall not constitute a notice to owner.

## 713.17 Materials not attachable for debts of purchaser.—

Whenever materials have been furnished to improve real property and payment therefor has not been made or waived, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for materials furnished and the materialman has not received payment therefor, such materials shall not be subject to attachment, execution, or other legal process to enforce the debt due for the purchase price.

## 713.18 Manner of serving notices and other instruments.—

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under s. [255.05](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0255/Sections/0255.05.html), s. [337.18](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0337/Sections/0337.18.html), or s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html) is effective as of the date of mailing if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c) 1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains electronic tracking records generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3) (a) Service of an instrument pursuant to this section is effective on the date of mailing the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and

2. Is returned as being “refused,” “moved, not forwardable,” or “unclaimed,” or is otherwise not delivered or deliverable through no fault of the person serving the item.

(b) If the address shown in the notice of commencement or any amendment to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A notice served by a lienor on one owner or one partner of a partnership owning the real property is deemed notice to all owners and partners.

## 713.19 Assignment of lien.—

A lien or prospective lien, except that of a laborer, may be assigned by the lienor at any time before its discharge. The assignment may be recorded in the clerk's office.

## 713.20 Waiver or release of liens.—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his or her demand shall not constitute a waiver of his or her lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(2) A right to claim a lien may not be waived in advance. A lien right may be waived only to the extent of labor, services, or materials furnished. Any waiver of a right to claim a lien that is made in advance is unenforceable.

(3) Any person may at any time waive, release, or satisfy any part of his or her lien under this part, either as to the amount due for labor, services, or materials furnished or for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

(4) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release may be in substantially the following form:

##### WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of $\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through ~(insert date)~ to ~(insert the name of your customer)~ on the job of ~(insert the name of the owner)~ to the following property:

~(description of property)~

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on \_\_\_\_\_, ~(year)~.

~(Lienor)~

By: \_\_\_\_\_\_\_\_\_\_

(5) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release may be in substantially the following form:

##### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of $\_\_\_\_\_\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to ~(insert the name of your customer)~ on the job of ~(insert the name of the owner)~ to the following described property:

~(description of property)~

DATED on \_\_\_\_\_, ~(year)~.

~(Lienor)~

By: \_\_\_\_\_\_\_\_\_\_

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5).

(7) A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.

(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

## 713.21 Discharge of lien.—

A lien properly perfected under 1this chapter may be discharged by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, the lienor's agent or attorney and attested by said clerk. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction of the lienor, duly acknowledged and recorded in the clerk's office. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

1Note.--The language "this chapter" predates inclusion of this material in chapter 713 and, when initially included in this section's text, referred to former chapter 84, Mechanics Liens. The Florida Uniform Federal Lien Registration Act was enacted without reference to statutory placement by ch. 92-25, Laws of Florida, and was added as part IV of chapter 713 by the Division of Statutory Revision.

## 13.22 Duration of lien.—

(1) A lien provided by this part does not continue for a longer period than 1 year after the claim of lien has been recorded or 1 year after the recording of an amended claim of lien that shows a later date of final furnishing of labor, services, or materials, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. A lien that has been continued beyond the 1-year period by the commencement of an action is not enforceable against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

(2) An owner or the owner's attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

##### NOTICE OF CONTEST OF LIEN

To: ~(Name and address of lienor)~

You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_\_, ~(year)~, and recorded in \_\_\_\_\_ Book \_\_\_\_\_, Page \_\_\_\_\_, of the public records of \_\_\_\_\_ County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~.

Signed: ~(Owner or Attorney)~

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the notice and record the notice.

## 713.23 Payment bond.—

(1) (a) The payment bond required to exempt an owner under this part shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract, and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the contractor shall promptly make payments for labor, services, and material to all lienors under the contractor’s direct contract. Any form of bond given by a contractor conditioned to pay for labor, services, and material used to improve real property shall be deemed to include the condition of this subsection.

(b) The owner, contractor, or surety shall furnish a true copy of the bond at the cost of reproduction to any lienor demanding it. Any person who fails or refuses to furnish the copy without justifiable cause shall be liable to the lienor demanding the copy for any damages caused by the refusal or failure.

(c) Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor’s bond for protection on the work. If a notice of commencement with the attached bond is not recorded before commencement of construction, the lienor not in privity with the contractor may, in the alternative, elect to serve the notice to the contractor up to 45 days after the date the lienor is served with a copy of the bond. A notice to owner pursuant to s. 713.06 that has been timely served on the contractor satisfies the requirements of this paragraph. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The notice may be in substantially the following form and may be combined with a notice to owner given under s. 713.06 and, if so, may be entitled “NOTICE TO OWNER/NOTICE TO CONTRACTOR”:

##### NOTICE TO CONTRACTOR

To (name and address of contractor)

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

(general description of services or materials) for the improvement of the real property identified as (property description) under an order given by (lienor’s customer) .

This notice is to inform you that the undersigned intends to look to the contractor’s bond to secure payment for the furnishing of materials or services for the improvement of the real property.

(name of lienor)

(signature of lienor or lienor’s representative)

(date)

(lienor’s address)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment to the contractor and the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be servedlater than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor’s contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment shall be measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor’s claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

##### NOTICE OF NONPAYMENT

To (name of contractor and address)

(name of surety and address)

The undersigned lienor notifies you that:

1. The lienor has furnished (describe labor, services, or materials) for the improvement of the real property identified as (property description) . The corresponding amount unpaid to date is $....., of which $.....is unpaid retainage.

2. The lienor has been paid to date the amount of $...... for previously furnishing …(describe labor, services, or materials)… for this improvement.

3. The lienor expects to furnish …(describe labor, services, or materials) … for this improvement in the future (if known), and the corresponding amount expected to become due is $...... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ………………………., ……………….

(signature and address of lienor)

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and subscribed before

me this ...... day of ......, …(year)…, by …(name of signatory)….

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ............ OR Produced Identification ............

Type of Identification Produced . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Section 5. The amendment made by this act to s. 627.756, Florida Statutes, applies only to payment or performance bonds issued on or after October 1, 2019.

(e) An action for the labor or materials or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. An action may not be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the lienor. The time period may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor’s attorney may elect to shorten the time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 must be commenced at any time after a notice of nonpayment, if required, has been served for the claim by recording in the clerk’s office a notice in substantially the following form:

##### NOTICE OF CONTEST OF CLAIM AGAINST PAYMENT BOND

To: (Name and address of lienor)

You are notified that the undersigned contests your notice of nonpayment, dated , , and served on the undersigned on , , and that the time within which you may file suit to enforce your claim is limited to 60 days from the date of service of this notice.

DATED on , .

Signed: (Contractor or Attorney)

The claim of any lienor upon whom the notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of the notice shall be extinguished automatically. The contractor or the contractor’s attorney shall serve a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

(f) A lienor has a direct right of action on the bond against the surety. Any provision in a payment bond issued on or after October 1, 2012, which further restricts the classes of persons who are protected by the payment bond, which restricts the venue of any proceeding relating to such payment bond, which limits or expands the effective duration of the payment bond, or which adds conditions precedent to the enforcement of a claim against a payment bond beyond those provided in this part is unenforceable. The surety is not entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety may not be increased beyond the penal sum of the bond. A lienor may not waive in advance his or her right to bring an action under the bond against the surety.

(2) The bond shall secure every lien under the direct contract accruing subsequent to its execution and delivery, except that of the contractor. Every claim of lien, except that of the contractor, filed subsequent to execution and delivery of the bond shall be transferred to it with the same effect as liens transferred under s. 713.24. Record notice of the transfer shall be effected by the contractor, or any person having an interest in the property against which the claim of lien has been asserted, by recording in the clerk’s office a notice, with the bond attached, in substantially the following form:

##### NOTICE OF BOND

To (Name and Address of Lienor)

You are notified that the claim of lien filed by you on , , and recorded in Official Records Book at page of the public records of County, Florida, is secured by a bond, a copy being attached.

Signed: (Name of person recording notice)

The notice shall be verified. The person recording the notice of bond shall serve a copy of the notice with a copy of the bond to the lienor at the address shown in the claim of lien, or the most recent amendment to it; shall certify to the service on the face of the notice; and shall record the notice.

(3) A payment bond in substantially the following form shall be sufficient:

##### PAYMENT BOND

BY THIS BOND We, , as Principal, and , a corporation, as Surety, are bound to , herein called Owner, in the sum of $ for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated , , between Principal and Owner for construction of , the contract being made a part of this bond by reference; and

2. Pays Owner all loss, damage, expenses, costs, and attorney fees, including appellate proceedings, that Owner sustains because of default by Principal under paragraph 1. of this bond; then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or with the changes do not affect Surety’s obligation under this bond.

DATED on , .

(Principal)  (SEAL)

(Surety’s name)

By

As Attorney in Fact

(4) The provisions of s. 713.24(3) apply to bonds under this section except when those provisions conflict with this section.

(5) A waiver and release of lien pursuant to s. 713.20 given by a lienor shall constitute a waiver and release in a like amount of the lienor’s right to make a claim against a payment bond under this section.

## 713.235 Waivers of right to claim against payment bond; forms.—

(1) When a person is required to execute a waiver of his or her right to make a claim against a payment bond provided pursuant to s. 713.23 or s. 713.245, in exchange for, or to induce payment of, a progress payment, the waiver may be in substantially the following form:

##### WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND

(PROGRESS PAYMENT)

The undersigned, in consideration of the sum of $\_\_\_\_\_ hereby waives its right to claim against the payment bond for labor, services, or materials furnished through ~(insert date)~, to

~(insert the name of your customer)~ on the job of ~(insert the name of the owner)~, for improvements to the following described project:

(description of project)

This waiver does not cover any retention or any labor, services, or materials furnished after the date specified. DATED on \_\_\_\_\_

~(Lienor)~

By:\_\_\_\_\_\_\_\_\_\_

(2) When a person is required to execute a waiver of his or her right to make a claim against a payment bond provided pursuant to s. 713.23 or s. 713.245, in exchange for, or to induce payment of, the final payment, the waiver may be in substantially the following form:

##### WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL PAYMENT)

The undersigned, in consideration of the final payment in the amount of $\_\_\_\_\_, hereby waives its right to claim against the payment bond for labor, services, or materials furnished to ~ (insert the name of your customer)~ on the job of ~ (insert the name of the owner)~, for improvements to the following described project:

(description of project)

DATED on \_\_\_\_\_

~(Lienor)~

By:\_\_\_\_\_\_\_\_\_\_

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(4) A person who executes a waiver in exchange for a check may condition the waiver on payment of the check.

(5) A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms.

## 713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus $1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to $20, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund.. If the transaction involves the transfer of multiple liens, an additional charge of up to $10 for each additional lien shall be charged, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or lien transfer bond. Nothing in this section shall be construed to vest exclusive jurisdiction in the circuit courts over transfer bond claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer. If a proceeding to enforce a lien is commenced in a court of competent jurisdiction within the time specified in s. 713.22 and, during such proceeding, the lien is transferred pursuant to this section or s. 713.13(1)(e), an action commenced within 1 year after the transfer, unless otherwise shortened by operation of law, in the same county or circuit court to recover against the security shall be deemed to have been brought as of the date of filing the action to enforce the lien, and the court shall have jurisdiction over the action.

## 713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus $1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing

the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to $15. If the transaction involves the transfer of multiple liens, an additional charge of up to $7.50 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or lien transfer bond.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer.

## 713.245 Conditional payment bond.—

(1) Notwithstanding any provisions of ss. 713.23 and 713.24 to the contrary, if the contractor's written contractual obligation to pay lienors is expressly conditioned upon and limited to the payments made by the owner to the contractor, the duty of the surety to pay lienors will be coextensive with the duty of the contractor to pay, if the following provisions are complied with:

(a) The bond is listed in the notice of commencement for the project as a conditional payment bond and is recorded together with the notice of commencement for the project prior to commencement of the project.

(b) The words "conditional payment bond" are contained in the title of the bond at the top of the front page.

(c) The bond contains on the front page, in at least 10-point type, the statement: THIS BOND ONLY COVERS CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING A CLAIM OF LIEN ON THIS PROJECT.

(2) Except as specified in this section, all bonds issued under this section must conform to the requirements of s. 713.23(1)(a), (b), (f), and (4). No action shall be instituted or prosecuted against the contractor or the surety after 1 year from the date the lien is transferred to the bond.

(3) The owner's property is not exempt from liens filed under this part. All lienors must comply with the provisions of this part to preserve and perfect those lien rights.

(4) Within 90 days after a claim of lien is recorded for labor, services, or materials for which the contractor has been paid, the owner or the contractor may record a notice of bond as specified in s. 713.23(2), together with a copy of the bond and a sworn statement in substantially the following form:

##### CERTIFICATE OF PAYMENT TO THE CONTRACTOR

TO: Lienor ~(name and address from claim of lien)~

Contractor ~(name and address)~

Surety ~(name and address)~

Under penalties of perjury, the undersigned certifies that the bond recorded with this certificate conforms with s. 713.245, F.S., that the bond is in full force and effect, and that the contractor has been paid $\_\_\_\_\_ for the labor, services, and materials described in the Claim of Lien filed by \_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_, ~(year)~, and recorded \_\_\_\_\_\_\_\_\_\_, ~(year)~, in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of \_\_\_\_\_\_\_\_\_\_ County, Florida.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, ~(year)~.

~(Owner)~

~(Address)~

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

~(Contractor)~

~(Address)~

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Any notice of bond recorded more than 90 days after the recording of the claim of lien shall have no force or effect as to that lien unless the owner, the contractor and the surety all sign the notice of bond.

(5) The clerk shall serve a copy of the notice, the bond, and the certificate on the contractor, the surety, and the lienor; certify to the service on the face of the notice, the bond, and the certificate; record the notice, the bond, and the certificate; and collect a fee in accordance with s. 713.23(2).

(6) The contractor may join in a certificate of payment to the contractor at any time by recording a sworn statement substantially in the following form:

##### JOINDER IN CERTIFICATE OF PAYMENT

TO: Owner ~(name and address from certificate of payment)~

Lienor ~(name and address from claim of lien)~

Surety ~(name and address)~

The undersigned joins in the Certificate of Payment to the Contractor recorded on \_\_\_\_\_\_\_\_\_\_, ~(year)~, in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of \_\_\_\_\_\_\_\_\_\_ County, Florida, and certifies that the facts stated in the Certificate of Payment to the Contractor are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, ~(year)~.

~(Name)~

~(Address)~

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(7) The clerk shall serve the joinder in certificate of payment on the owner, the surety, and the lienor; certify to the service on the face of the joinder; record the joinder; and collect a fee in accordance with s. 713.23(2).

(8) If the contractor disputes the certificate of payment to the contractor, the contractor must record, not later than 15 days after the date the clerk certifies service of the certificate, a sworn statement in substantially the following form:

##### NOTICE OF CONTEST OF PAYMENT

TO: Owner ~(name and address from certificate of payment)~ Lienor ~(name and address from claim of lien)~

Surety ~(name and address)~

Under penalties of perjury, the undersigned certifies that the contractor has not been paid or has only been paid $\_\_\_\_\_ for the labor, services, and materials described in the Certificate of Payment to the Contractor recorded in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of \_\_\_\_\_\_\_\_\_\_ County, Florida.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, ~(year)~.

~(Name)~

~(Address)~

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF FLORIDA COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, ~(year)~, by ~(name of person making statement)~.

~(Signature of Notary Public - State of Florida)~

~(Print, Type, or Stamp Commissioned Name of Notary Public)~

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(9) The clerk shall serve a copy of the notice of contest of payment on the owner, the lienor, and the surety; certify service on the face of the notice; record the notice; and collect a fee in accordance with s. 713.23(2).

(10) If the contractor has signed the certificate of payment to the contractor or the joinder in the certificate or the contractor fails to record a notice of contest of payment within 15 days after the date the clerk certifies service of a certificate of payment to the contractor signed by the owner, the lien shall transfer to the bond to the extent of payment specified in the certificate of payment to the contractor. To the extent the lien exceeds the amount specified in the certificate of payment to the contractor, such amount shall remain as a lien on the owner's property. The surety may assert all claims or defenses of the owner regarding the validity of the claim of lien or of the contractor regarding the amount due the lienor.

(11) If the notice of contest of payment specifies that the contractor has been paid a portion of the amount due the lienor, the lien shall transfer to the bond to the extent of the payment specified in the notice of contest of payment. To the extent the lien exceeds the amount specified in the notice of contest of payment, such amount shall remain as a lien on the owner's property. The surety may assert all claims or defenses of the owner regarding the validity of the claim of lien or of the contractor regarding the amount due the lienor.

(12) If there are any material misstatements of fact made by the owner or the contractor in any certificate of payment to the contractor, or by the contractor in any notice of contest of payment, the person making the material misstatement is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The penalties apply individually and to the business entity if the false certificate is signed in a representative capacity.

(13) The certificate of payment to the contractor and the notice of contest of payment must be signed by the owner or the contractor individually if she or he is a natural person, by the general partner if the owner or the contractor is a limited partnership, by a partner if the owner or the contractor is a general partnership, by the president or a vice president if the owner or the contractor is a corporation, or by any authorized agent if the owner or the contractor is any other type of business entity.

(14) In an action to enforce a lien, the owner shall not be considered the prevailing party solely because the lien is transferred to a conditional payment bond after the action to enforce the lien is brought.

## 713.25 Applicability of ch. 65-456.—

This act shall take effect on July 1, 1965, but shall not apply to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights.

## 713.26 Redemption and sale.—

The right of redemption upon all sales under this part shall exist in favor of the person whose interest is sold and may be exercised in the same manner as is or may be provided for redemption of real property from sales under mortgages.

## 713.27 Interplead.—

An owner or other person holding funds for disbursement on an improvement shall have the right to interplead such lienor and any other person having or claiming to have an interest in the real property improved or a contract relating to the improvement thereof, whenever there is a dispute between lienors as to the amounts due or to become due them. If the court decrees the interpleader, it may transfer all claims to the funds held by the plaintiff. In such case the court shall require said fund to be deposited in registry of court and, effective upon such deposit, shall decree the real property to be free of all liens and claims of lien of the parties to the suit.

## 713.28 Judgments in case of failure to establish liens; personal and deficiency judgments or decrees.—

(1) If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him or her in an action to enforce the same under the provisions of this part, he or she may, in addition to the lien decreed in his or her favor, recover a judgment or decree in such action against any party liable therefor for such sums in excess of the lien as are due him or her or which the lienor might recover in an action on a contract against any party to the action from whom such sums are due him or her.

(2) In any action heretofore or hereafter brought a court may, either before or after the final adjudication, award a summary money judgment or decree in favor of any party. This shall not preclude the rendition of other judgments or decrees in the action.

(3) If, upon the sale of the real property under any judgment or decree there is a deficiency of proceeds to pay the amount of such judgment or decree, the judgment or decree may be enforced for the deficiency against any person liable therefor in the same manner and under the same conditions as deficiency decrees in mortgage foreclosures. Any payment made on account of any judgment or decree in favor of a party shall be credited on any other judgment or decree rendered in favor of that party in the same action.

## 713.29 Attorney fees.—

In any action brought to enforce a lien or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

## 713.30 Other actions not barred.—

This part shall be cumulative to other existing remedies and nothing contained in this part shall be construed to prevent any lienor or assignee under any contract from maintaining an action thereon at law in like manner as if he or she had no lien for the security of his or her debt, and the bringing of such action shall not prejudice his or her rights under this part, except as herein otherwise expressly provided.

## 713.31 Remedies in case of fraud or collusion.—

(1) When the owner or any lienor shall, by fraud or collusion, deprive or attempt to deprive any lienor of benefits or rights to which such lienor is entitled under this part by establishing or manipulating the contract price or by giving false affidavits, releases, invoices, worthless checks, statements, or written instruments permitted or required under this part relating to the improvement of real property hereunder to the detriment of any such lienor, the circuit court in chancery shall have jurisdiction, upon a complaint filed by such lienor, to issue temporary and permanent injunctions, order accountings, grant discovery, utilize all remedies available under creditors' bills and proceedings supplementary to execution, marshal assets, and exercise any other appropriate legal or equitable remedies or procedures without regard to the adequacy of a remedy at law or whether or not irreparable damage has or will be done.

(2) (a) Any lien asserted under this part in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he or she seeks to impress such lien or in which the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien.

(b) It is a complete defense to any action to enforce a lien under this part, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien; and the court so finding is empowered to and shall declare the lien unenforceable, and the lienor thereupon forfeits his or her right to any lien on the property upon which he or she sought to impress such fraudulent lien. However, a minor mistake or error in a claim of lien, or a good faith dispute as to the amount due does not constitute a willful exaggeration that operates to defeat an otherwise valid lien.

(c) An owner against whose interest in real property a fraudulent lien is filed, or any contractor, subcontractor, or sub-subcontractor who suffers damages as a result of the filing of the fraudulent lien, shall have a right of action for damages occasioned thereby. The action may be instituted independently of any other action, or in connection with a summons to show cause under s. 713.21, or as a counterclaim or cross-claim to any action to enforce or to determine the validity of the lien. The prevailing party in an action under this paragraph may recover reasonable attorney fees and costs. If the lienor who files a fraudulent lien is not the prevailing party, the lienor shall be liable to the owner or the defrauded party who prevails in an action under this subsection in damages, which shall include court costs, clerk's fees, a reasonable attorney's fee and costs for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

(3) Any person who willfully files a fraudulent lien, as defined in this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of this subsection, shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter, and if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

## 713.32 Insurance proceeds liable for demands.—

The proceeds of any insurance that by the terms of the policy contract are payable to the owner of improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement had not been so damaged, destroyed, or removed. The insurer may pay the proceeds of the policy of insurance to the insured named in the policy and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

## 713.33 Disbursing agent and others may rely on owner's notices.—

When the proceeds of a construction or improvement loan or any portion thereof are being disbursed by a person other than the owner, any affidavit, notice or other instrument which is permitted or required under this part to be furnished to the owner may be relied upon by such other person in making such disbursements to the same extent as the owner is entitled to rely upon the same.

## 713.345 Moneys received for real property improvements; penalty for misapplication.— contains 2005 General Laws

(1) (a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion of any payment to the payment of all amounts then due and owing for services and labor which were performed on, or materials which were furnished for, such improvement prior to receipt of the payment. This paragraph does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.

(b) Any person who knowingly and intentionally fails to comply with paragraph (a) is guilty of misapplication of construction funds, punishable as follows:

1. If the amount of payments misapplied has an aggregate value of $100,000 or more, the violator is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the amount of payments misapplied has an aggregate value of $1,000 $20,000 or more but less than $100,000, the violator is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the amount of payments misapplied has an aggregate value of less than $1,000 $20,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A permissive inference that a person knowingly and intentionally misapplied construction funds in violation of this subsection is created when a valid lien has been recorded against the property of an owner for labor, services, or materials; the person who ordered the labor, services, or materials has received sufficient funds to pay for such labor, services, or materials; and the person has failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials, except for funds withheld pursuant to paragraph (a).

(d) A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of paragraph (b), shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

(2) This section does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds.

## 713.345 Moneys received for real property improvements; penalty for misapplication.—

(1) (a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion of any payment to the payment of all amounts then due and owing for services and labor which were performed on, or materials which were furnished for, such improvement prior to receipt of the payment. This paragraph does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.

(b) Any person who knowingly and intentionally fails to comply with paragraph (a) is guilty of misapplication of construction funds, punishable as follows:

1. If the amount of payments misapplied has an aggregate value of $100,000 or more, the violator is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the amount of payments misapplied has an aggregate value of $20,000 or more but less than $100,000, the violator is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the amount of payments misapplied has an aggregate value of less than $20,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A permissive inference that a person knowingly and intentionally misapplied construction funds in violation of this subsection is created when a valid lien has been recorded against the property of an owner for labor, services, or materials; the person who ordered the labor, services, or materials has received sufficient funds to pay for such labor, services, or materials; and the person has failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials, except for funds withheld pursuant to paragraph (a).

(d) A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of paragraph (b), shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

(2) This section does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds.

## 713.346 Payment on construction contracts.—

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within 30 days after the date payment for such labor, services, or materials is received, whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

(3) Any person providing labor, services, or materials for improvements to real property may file a verified complaint alleging:

(a) The existence of a contract, as defined in s. 713.01, to improve real property.

(b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract.

(c) The amount of the contract price.

(d) The amount, if any, paid pursuant to the contract.

(e) The amount that remains unpaid pursuant to the contract, and the amount thereof that is undisputed.

(f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received.

(g) That the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint more than 30 days prior to the date the complaint was filed.

(4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials is entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:

(a) An accounting of the use of any such payment from the person who received such payment.

(b) A temporary injunction against the person who received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.

(c) Prejudgment attachment against the person who received the payment, in accordance with each of the requirements of chapter 76.

(d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.

(5) The remedies specified in subsection (4) must be granted without regard to any other remedy at law and without regard to whether or not irreparable damage has occurred or will occur.

(6) The remedies specified in subsection (4) do not apply:

(a) To the extent of a bona fide dispute regarding any portion of the contract price.

(b) In the event the plaintiff has committed a material breach of the contract which would relieve the defendant from the obligations under the contract.

(7) The prevailing party in any proceeding under this section is entitled to recover costs, including a reasonable attorney's fee, at trial and on appeal.

## 713.3471 Lender responsibilities with construction loans.—

(1) Prior to a lender making any loan disbursement directly to the owner, or jointly to the owner and any other party, the lender shall give the following written notice to the borrowers in bold type larger than any other type on the page:

WARNING!

YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR, SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

(2) (a) Within 5 business days after a lender makes a final determination, prior to the distribution of all funds available under a construction loan, that the lender will cease further advances pursuant to the loan, the lender shall serve written notice of that decision on the contractor and on any other lienor who has given the lender notice. The lender shall not be liable to the contractor based upon the decision of the lender to cease further advances if the lender gives the contractor notice of such decision in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) The failure to give notice to the contractor under paragraph (a) renders the lender liable to the contractor to the extent of the actual value of the materials and direct labor costs furnished by the contractor plus 15 percent for overhead, profit, and all other costs from the date on which notice of the lender's decision should have been served on the contractor and the date on which notice of the lender's decision is served on the contractor. The lender and the contractor may agree in writing to any other reasonable method for determining the value of the labor, services, and materials furnished by the contractor.

(c) The liability of the lender shall in no event be greater than the amount of undisbursed funds at the time the notice should have been given unless the failure to give notice was done for the purpose of defrauding the contractor. The lender is not liable to the contractor for consequential or punitive damages for failure to give timely notice under this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the lender's failure to give timely notice under this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for an equitable lien or for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(d) For purposes of serving notice on the contractor under this subsection, the lender may rely on the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, on the name and address of the contractor listed in the uniform building permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(e) The contractor or any other lienor may not waive the right to receive notice under this paragraph.

(3) (a) If the lender and the borrower have designated a portion of the construction loan proceeds, the borrower may not authorize the lender to disburse the funds so designated for any other purpose until the owner serves the contractor and any other lienor who has given the owner a notice to owner with written notice of that decision, including the amount of such loan proceeds to be disbursed. For the purposes of this subsection, the term "designated construction loan proceeds" means that portion of the loan allocated to actual construction costs of the facility and shall not include allocated loan proceeds for tenant improvements where the contractor has no contractual obligation or work order to proceed with such improvements. The lender shall not be liable to the contractor based upon the reallocation of the loan proceeds or the disbursement of the loan proceeds if the notice is timely given in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) If the lender is permitted under the loan documents to make disbursements from the loan contrary to the original loan budget without the borrower's prior consent, the lender is responsible for serving the notice to the contractor or other lienor required under this subsection.

(c) This subsection does not apply to a residential project of four units or less.

(d) This subsection does not apply to construction loans of less than $1 million unless the lender has committed to make more than one loan, the total of which loans are greater than $1 million, for the purpose of evading this subsection.

(e) The owner or the lender is not required to give notice to the contractor or any other lienor under this subsection unless the total amount of all disbursements described in paragraph (a) exceed 5 percent of the original amount of the designated construction loan proceeds or $100,000, whichever is less.

(f) Disbursement of loan proceeds contrary to this subsection renders the lender liable to the contractor to the extent of any such disbursements or to the extent of the actual value of the materials and direct labor costs plus 15 percent for overhead, profit, and all other costs, whichever is less. The lender is not liable to the contractor for consequential or punitive damages for disbursing loan proceeds in violation of this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the disbursement of loan proceeds in violation of this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(g) For purposes of serving notice on the contractor under this subsection, the lender may rely upon the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, the name and address of the contractor listed in the uniform building permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(h) For purposes of this subsection, the lender may rely upon a written statement, signed under oath by the contractor or any other lienor, that confirms that the contractor or the lienor has received the written notice required by this subsection.

(i) A contractor and any other lienor may not waive his or her right to receive notice under this subsection.

## 713.35 Making or furnishing false statement.—

Any person, firm, or corporation who knowingly and intentionally makes or furnishes to another person, firm, or corporation, an affidavit, A waiver or release of lien, or other document, whether or not under oath, containing false information about the payment status of subcontractors, sub-subcontractors, or suppliers in connection with the improvement of real property in this state, knowing that the one to whom it was furnished might rely on it, and the one to whom it was furnished will part with draw payments or final payment relying on the truth of such statement as an inducement to do so commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of this section, shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

## 713.37 Rule of construction.—

This part shall not be subject to a rule of liberal construction in favor of any person to whom it applies.

# Property

**(Selected Provisions)**

**715.07 Vehicles parked on private property; towing.——**

**715.109 Sale or disposition of abandoned property.——**

## 715.07 Vehicles or vessels parked on private property; towing.——

(1) As used in this section, the term:

(a) "Vehicle" means any mobile item which normally uses wheels, whether motorized or not.

(b) “Vessel” means every description of watercraft, barge, and air boat used or capable of being used as a means of transportation on water, other than a seaplane or a “documented vessel” as defined in s. 327.02.

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to strict compliance with the following conditions and restrictions:

1. a. Any towed or removed vehicle or vessel must be stored at a site within a 10 mile radius of the point of removal in any county of 500,000 population or more, and within a 15 mile radius of the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle or vessel is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within 1 hour or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle or vessel must be stored at a site within a 20 mile radius of the point of removal in any county of 500,000 population or more, and within a 30 mile radius of the point of removal in any county of less than 500,000 population.

2. The person or firm towing or removing the vehicle or vessel shall, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff, of such towing or removal, the storage site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. A person in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is not lawfully parked must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in subparagraph 6. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is unable to pay the service fee. If the vehicle or vessel is redeemed, a detailed signed receipt must be given to the person redeeming the vehicle or vessel.

4. A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location. 5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the owner's or operator's expense, any property owner or lessee, or person authorized by the property owner or lessee, prior to towing or removing any vehicle or vessel from private property without the consent of the owner or other legally authorized person in control of that vehicle or vessel, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.

b. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles or vessels.

e. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles or vessels being authorized.

f. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only. Unauthorized Vehicles or Vessels Will be Towed Away at the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

g. A property owner towing or removing vessels from real property must post notice, consistent with the requirements in sub-subparagraphs a.-f., which apply to vehicles, that unauthorized vehicles or vessels will be towed away at the owner’s expense. A business owner or lessee may authorize the removal of a vehicle or vessel by a towing company when the vehicle or vessel is parked in such a manner that restricts the normal operation of business; and if a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign.

6. Any person or firm that tows or removes vehicles or vessels and proposes to require an owner, operator, or person in control of a vehicle or vessel to pay the costs of towing and storage prior to redemption of the vehicle or vessel must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles or vessels as provided in this section.

7. Any person or firm towing or removing any vehicles or vessels from private property without the consent of the owner or other legally authorized person in control of the vehicles or vessels shall, on any trucks, wreckers as defined in s. 713.78(1)(c), or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least 3—inch permanently affixed letters, and the address and telephone number shall be in at least 1—inch permanently affixed letters.

8. Vehicle entry for the purpose of removing the vehicle or vessel shall be allowed with reasonable care on the part of the person or firm towing the vehicle or vessel. Such person or firm shall be liable for any damage occasioned to the vehicle or vessel if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle or vessel has been towed or removed pursuant to this section, it must be released to its owner or custodian within one hour after requested. Any vehicle or vessel owner, or agent shall have the right to inspect the vehicle or vessel before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle or vessel owner, custodian, or agent as a condition of release of the vehicle or vessel to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements are minimum standards and do not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles or vessels are towed from private property.

(3) This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles or vessels that are marked as such or to property owned by any governmental entity.

(4) When a person improperly causes a vehicle or vessel to be removed, such person shall be liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney fees; and court costs.

(5) (a) Any person who violates subparagraph (2)(a)2. or subparagraph (2)(a)6. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates subparagraph (2)(a)1., subparagraph (2)(a)3., subparagraph (2)(a)4., subparagraph (2)(a)7, or subparagraph (2)(a)9. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## 715.109 Sale or disposition of abandoned property.——

(1) If the personal property described in the notice is not released pursuant to s. 715.108, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than $250, he may retain such property for his own use or dispose of it in any manner he chooses. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale. The successful bidder's title is subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by an advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held. The sale must be held at the nearest suitable place to that where the personal property is held or stored. The advertisement must include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale must take place at least 10 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The last publication shall be at least 5 days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to s. 715.104.

(3) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by s. 715.11 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(4) After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which is not claimed by the former tenant or an owner other than such tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The former tenant or other owner or other person having interest in the funds may claim the balance within 1 year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid.

# Condominiums

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# Part I General Provisions

## 718.101 Short title.——

This chapter shall be known and may be cited as the "Condominium Act."

## 718.102 Purposes.——

The purpose of this chapter is:

(1) To give statutory recognition to the condominium form of ownership of real property.

(2) To establish procedures for the creation, sale, and operation of condominiums.

Every condominium created and existing in this state shall be subject to the provisions of this chapter.

## 718.103 Definitions.——

As used in this chapter, the term:

(1) "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

(3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

(4) "Board of administration" or “board” means the board of directors or other representative body which is responsible for administration of the association.

(5) “ Buyer” means a person who purchases a condominium unit. The term “purchaser” may be used interchangeably with the term “buyer.”

(6) "Bylaws " means the bylaws of the association as they are amended from time to time.

(7) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.

(8) "Common elements" means the portions of the condominium property not included in the units.

(9) "Common expenses" means all expenses properly incurred by the association in the performance of its duties, including expenses specified in s. 718.115.

(10) "Common surplus" means the amount of all receipts or revenues (including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.

(11) "Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

(12) "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.

(13) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(14) [(See also Chapter 61B-17.006, F.A.C.)](#_61B-17.006_Filing_and)

"Conspicuous type" means bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law.

(15) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners ­are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

(17) “Division” means the Division of Florida, Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(18) "Land” means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

(19) "Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

(20) “Multicondominium” means a real estate development containing two or more condominiums all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

(22) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(23) "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use.

With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

(24) "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

(25) "Timeshare estate" means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time.

(26) "Timeshare unit" means a unit in which timeshare estates have been created.

(27) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(28) "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

(29) "Voting certificate" means a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.

(30) "Voting interests" means the voting rights distributed to the association members pursuant to s.718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

## 718.1035 Power of attorney; compliance with chapter.——

The use of a power of attorney that affects any aspect of the operation of a condominium shall be subject to and in compliance with the provisions of this chapter and all condominium documents, association rules and other rules adopted pursuant to this chapter, and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

## 718.104 Creation of condominiums; contents of declaration.—

[(See also Chapter 61B-17.001; .003, F.A.C.)](#_61B-17.0012_Declaration;_Filing.)

Every condominium created in this state shall be created pursuant to this chapter.

(1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of s. 718.401.

(2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located or any other requirement or description that a declaration may provide.

Upon recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(3) All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.

(4) The declaration must contain or provide for the following matters:

(a) A statement submitting the property to condominium ownership.

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."

(c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) A survey of the land which meets the standards of practice established by the Board of Professional Surveyors and Mappers, pursuant to s. 472.027, and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Failure of the survey to meet the standards of practice does not invalidate an otherwise validly created condominium.

The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor and mapper authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. 718.105 that the construction of the improvements is substantially complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.

Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor and mapper as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to such declaration.

This section does not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. 718.403 before conveying a unit as provided in this paragraph. For the purposes of this section, a "certificate of a surveyor and mapper" means certification by a surveyor and mapper in the form provided in this paragraph and may include, along with certification by a surveyor and mapper, when appropriate, certification by an architect or engineer authorized to practice in this state.

Notwithstanding the requirements of substantial completion provided in this section, this paragraph does not prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded before the recording of a certificate of a surveyor and mapper as provided in this paragraph.

(f) The undivided share of ownership of the common elements and common surplus of the condominium that is appurtenant to each unit stated as a percentage or a fraction of the whole. In the declaration of condominium for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each residential unit shall be based either upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium or on an equal fractional basis.

The percentage or fractional shares of liability for common expenses of the condominium, which, for all residential units, must be the same as the undivided shares of ownership of the common elements and common surplus appurtenant to each unit as provided for in paragraph (f).

If a developer reserves the right, in a declaration recorded on or after July 1, 2000, to create a multicondominium, the declaration must state, or provide a specific formula for determining, the fractional or percentage shares of liability for the common expenses of the association and of ownership of the common surplus of the association to be allocated to the units in each condominium to be operated by the association. If a declaration recorded on or after July 1, 2000, for a condominium operated by a multicondominium association as originally recorded fails to so provide, the share of liability for the common expenses of the association and of ownership of the common surplus of the association allocated to each unit in each condominium operated by the association shall be a fraction of the whole, the numerator of which is the number “one” and the denominator of which is the total number of units in all condominiums operated by the association.

(i) The name of the association, which must be a corporation for profit or a corporation not for profit.

(j) Unit owners' membership and voting rights in the association.

(k) The document or documents creating the association, which may be attached as an exhibit.

(l) A copy of the bylaws, which shall be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(m) Other desired provisions not inconsistent with this chapter.

(n) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless:

1. Any such lien is subordinate to the rights of unit owners, or

2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated.

(o) If timeshare estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium. In addition, the degree, quantity, nature, and extent of the timeshare estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit.

(5) The declaration as originally recorded or as amended under the procedures provided therein may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his or her interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

***Section 25.*** *For the 2014-2015 fiscal year, the sum of $35,745 in nonrecurring funds is appropriated to the Department of Law Enforcement from the Operating Trust Fund for contracted services and operating capital outlay related to sealed criminal history records. To support this appropriation, funds in this amount shall be transferred from the Division of Licensing Trust Fund of the Department of Agriculture and Consumer Services to the Operating Trust Fund of the Department of Law Enforcement.*

## 718.1045 Timeshare estates; limitation on creation.——

No timeshare estates shall be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

## 718.105 Recording of declaration.——

(1) When executed as required by s. 718.104, a declaration together with all exhibits and all amendments is entitled to recordation as an agreement relating to the conveyance of land.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of a surveyor required by s. 718.104, may be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may, for his or her convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

(4) (a) If the declaration does not have the certificate or the survey or graphic description of the improvements required under s. 718.104(4)(e), the developer shall deliver therewith to the clerk an estimate, signed by a surveyor authorized to practice in this state, of the cost of a final survey or graphic description providing the certificate prescribed by s. 718.104(4)(e), and shall deposit with the clerk the sum of money specified in the estimate.

(b) The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of s. 718.104(4)(e). At that time, the clerk shall pay to the person presenting the amendment to the declaration the sum of money deposited, without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents.

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) within 5 years after the date the declaration was originally recorded, the clerk may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the clerk shall disburse the money to the Division of Florida Condominiums, Timeshares and Mobile Homes for deposit in the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund.

(5) When a declaration of condominium is recorded pursuant to this section, a certificate or receipted bill shall be filed with the clerk of the circuit court in the county where the property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation.

## 718.106 Condominium parcels; appurtenances; possession and enjoyment.—

(1) A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.

(2) There shall pass with a unit, as appurtenances thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration, including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted pursuant to the provisions contained therein. Amendments to declarations of condominium providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4). However, in order to be effective, the transfer of use rights with respect to limited common elements must be effectuated in conformity with the procedures set forth in the declaration as originally recorded or as amended under the procedures provided therein. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Membership in the association designated in the declaration, with the full voting rights appertaining thereto.

(e) Other appurtenances as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his or her unit, subject to the provisions of s. 718.111(5). He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

(4) When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners.

(5) A local government may not adopt an ordinance or regulation that prohibits condominium unit owners or their guests, licensees, or invitees from pedestrian access to a public beach contiguous to a condominium property, except where necessary to protect public health, safety, or natural resources. This subsection does not prohibit a governmental entity from enacting regulations governing activities taking place on the beach.

## 718.107 Restraint upon separation and partition of common elements.——

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.

(2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units are undivided, and no action for partition of the common elements shall lie.

## 718.108 Common elements.——

(1) "Common elements" includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

## 718.1085 Certain regulations not to be retroactively applied.—

Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium that meets the definition of “housing for older persons” in subparagraph 760.29(4)(b)3. to comply with requirements relating to handrails and guardrails if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting in common areas in a high-rise building. For the purposes of this section, the term “high-rise building” means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable level. For the purposes of this section, the term “common areas” means stairwells and exposed, outdoor walkways and corridors, but does not include individual balconies. In no event shall the local authority having jurisdiction require retrofitting of common areas with handrails and guardrails before the end of 2024.

(1) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association’s vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(2) As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

Section 17. By July 1, 2019, the State Fire Marshal shall issue a data call to all local fire officials to collect data regarding high-rise condominiums greater than 75 feet in height which have not retrofitted with a fire sprinkler system or an engineered life safety system in accordance with ss. 633.208(5) and 718.112(2)(l), Florida Statutes. Local fire officials shall submit such data to the State Fire Marshal and shall include, for each individual building, the address, the number of units, and the number of stories. By July 1, 2020, all data must be received and compiled into a report by city and county. By September 1, 2020, the report must be sent to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

## 718.109 Legal description of condominium parcels.——

Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

## 718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.——

(1) (a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and 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, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision  \_\_\_\_\_ for present text."

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104, 718.403, and 718.504(6), (7), and (9) without a vote of the unit owners and any rights the developer may have in the declaration to amend without consent of the unit owners which shall be limited to matters other than those under subsections (4) and (8), shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. An amendment by the developer must be evidenced in writing, but a certificate of the association is not required. The developer of a timeshare condominium may reserve specific rights in the declaration to amend the declaration without the consent of the unit owners.

(3) An amendment of a declaration is effective when properly recorded in the public records of the county where the declaration is recorded.

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association, and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

(5) If it appears that through a scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fails to equal 100 percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners.

(6) The common elements designated by the declaration may be enlarged by an amendment to the declaration. The amendment must describe the interest in the property and must submit the property to the terms of the declaration. The amendment must be approved and executed as provided in this section. The amendment divests the association of title to the land and vests title in the unit owners as part of the common elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the unit owned by them.

(7) The declarations, bylaws, and common elements of two or more independent condominiums of a single complex may be merged to form a single condominium, upon the approval of such voting interest of each condominium as is required by the declaration for modifying the appurtenances to the units or changing the proportion or percentages by which the owners of the parcel share the common expenses and own the common surplus; upon the approval of all record owners of liens; and upon the recording of new or amended articles of incorporation, declarations, and bylaws.

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) If there is an omission or error in a declaration, or in any other document required by law to establish the condominium, the association may correct the error or omission by an amendment to the declaration or to the other document required to create a condominium in the manner provided in the declaration to amend the declaration or, if none is provided, by vote of a majority of the voting interests of the condominium. The amendment is effective when passed and approved and a certificate of amendment is executed and recorded as provided in subsections (2) and (3). This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing.

This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, and the omission or error would affect the valid existence of the condominium, the circuit court may entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address.

If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, the declaration and other documents will effectively create a condominium, as of the date the declaration was recorded, regardless of whether the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section.

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters:

1. Those matters described in subsections (4) and (8).

2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee’s lien or the mortgagee’s rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made.

Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of

the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

(12) (a) With respect to an existing multicondominium association, any amendment to change the fractional or percentage share of liability for the common expenses of the association and ownership of the common surplus of the association must be approved by at least a majority of the total voting interests of each condominium operated by the association unless the declarations of all condominiums operated by the association uniformly require approval by a greater percentage of the voting interests of each condominium.

(b) Unless approval by a greater percentage of the voting interests of an existing multicondominium association is expressly required in the declaration of an existing condominium, the declaration may be amended upon approval of at least a majority of the total voting interests of each condominium operated by the multicondominium association for the purpose of:

1. Setting forth in the declaration the formula currently utilized, but not previously stated in the declaration, for determining the percentage or fractional shares of liability for the common expenses of the multicondominium association and ownership of the common surplus of the multicondominium association.

2. Providing for the creation or enlargement of a multicondominium association by the merger or consolidation of two or more associations and changing the name of the association, as appropriate.

(13) An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

(14) Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under paragraph (1)(a), and shall not be considered an amendment pursuant to subsection (4). This is a clarification of existing law.

## 718.111 The association.——

(1) CORPORATE ENTITY.

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d) and, if applicable, a criminal penalty as provided in paragraph (d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(d) As required by s. 617.0830, an officer, director, or agent shall dis­charge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the associa­tion. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an im­proper personal benefit, either directly or indirectly; or constitutes reckless­ness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, the theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, and the destruction of or the refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. 718.112(2)(d)2. until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

(2) POWERS AND DUTIES. The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws and part I of chapter 607 and chapter 617, as applicable.

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED.

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, 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, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(b) An association may not hire an attorney who represents the management company of the association.

(4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS. The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

(5) RIGHT OF ACCESS TO UNITS.

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit.

(b) 1. In addition to the association’s right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit 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. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. 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

b. 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.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association’s intent to enter the unit has been 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 unit owners who previously consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s.718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned unit for the benefit of the association to offset against the rental income the association’s costs and 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 fees.

(6) OPERATION OF CONDOMINIUMS CREATED PRIOR TO 1977.  
Notwithstanding any provision of this chapter, an association may operate two or more residential condominiums in which the initial condominium declaration was recorded prior to January 1, 1977, and may continue to so operate such condominiums as a single condominium for purposes of financial matters, including budgets, assessments, accounting, recordkeeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium or in the bylaws. An association for such condominiums may also provide for consolidated financial operation as described in this section either by amending its declaration pursuant to s. 718.110 (1)(a) or by amending its bylaws and having the amendment approved by not less than two-thirds of the total voting interests. Notwithstanding any provision in this chapter, common expenses for residential condominiums in such a project being operated by a single association may be assessed against all unit owners in such project pursuant to the proportions or percentages established therefore in the declarations as initially recorded or in the bylaws as initially adopted, subject, however, to the limitations of ss. 718.116 and 718.302.

(7) TITLE TO PROPERTY.

(a) The association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of its members. The power to acquire personal property shall be exercised by the board of administration.

Except as otherwise permitted in subsections (8) and (9) and in s. 718.114, no association may acquire, convey, lease, or mortgage association real property except in the manner provided in the declaration, and if the declaration does not specify the procedure, then approval of 75 percent of the total voting interests shall be required.

(b) Subject to the provisions of s. 718.112(2)(m), the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(8) PURCHASE OF LEASES. The association has the power to purchase any land or recreation lease, subject to the same manner of approval as in s. 718.114 for the acquisition of leaseholds.

(9) PURCHASE OF UNITS. The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resultin from the association’s foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(10) EASEMENTS. Unless prohibited by the declaration, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the common elements or association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s.718.104 (4)(n) or the powers enumerated in subsection (3).

(11) INSURANCE. In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.

1. An association or group of associations may provide adequate property insurance through a self-insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate property insurance coverage for a group of at least three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. A policy or program providing such coverage may not be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval must include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners before execution of the agreement by a condominium association.

3. When determining the adequate amount of property insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show that despite such failure, they have made their best efforts to maintain the required coverage.

(c) Policies may include deductibles as determined by the board.

1. The deductibles must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112(2)(e).

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection.

(e) The declaration of condominium as originally recorded, or as amended pursuant to procedures provided therein, may provide that condominium property consisting of freestanding buildings comprised of no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An 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.

(f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).

3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

(g) A condominium unit owner policy must conform to the requirements of s. 627.714.

1. All reconstruction work after a property loss must be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner must obtain all required governmental permits and approvals before commencing reconstruction.

2. Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, or for which the unit owner is responsible under paragraph (j), and the cost of any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment and may be collected in the manner provided for the collection of assessments pursuant to s. 718.116.

3. A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate the condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance must be stated in the association budget. The amendments must be recorded as required by s. 718.110.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term “persons who control or disburse funds of the association” includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(i) The association may amend the declaration of condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the declaration of condominium to the coverage requirements of this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by maintenance, the provisions of the declaration or bylaws. All property insurance deductibles, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds~~,~~ if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(k) An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions of paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

(l) In a multicondominium association that has not consolidated its financial operations under subsection (6), any condominium operated by the association may opt out of the provisions of paragraph (j) with the approval of a majority of the total voting interests in that condominium. Such vote may be approved by the voting interests without regard to any mortgagee consent requirements.

(m) Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses as described in paragraph (j) must record a notice setting forth the date of the opt-out vote and the page of the official records book on which the declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required in paragraphs (k) and (l), and notice thereof shall be recorded in the official records.

(n) The association is not obligated to pay for any reconstruction or repair expenses due to property loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

(o) The provisions of this subsection shall not apply to timeshare condominium associations. Insurance for timeshare condominium associations shall be maintained pursuant to s. 721.165.

(12) OFFICIAL RECORDS

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

17. Bids for materials, equipment, or services.

(b) The official records of the association must be maintained 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 a written request by the board or its designee.

However, such distance requirement does not apply to an association gov­erning a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) 1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association’s bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph.

A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys ac­counting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or inten­tionally fails to create or maintain accounting records that are required to be created or maintained with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association’s providing the member or his or her authorized representative with a copy of such records.

The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, 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.

d. Medical records of unit owners.

e. 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. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph 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

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the 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.

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e) 1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: “The responses herein are made in good faith and to the best of my ability as to their accuracy.”

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g) 1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

b. The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be lectronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with theDepartment of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

2. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

3. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association’s board or its committees.

(13) FINANCIAL REPORTING.  
Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not 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 at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association’s total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association’s financial reports from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliverhim or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner’s request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(14) COMMINGLING. All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately and a commingled account shall not, at any time, be less than the amount identified as reserve funds. This subsection does not prohibit a multicondominium association from commingling the operating funds of separate condominiums or the reserve funds of separate condominiums. Furthermore, for investment purposes only, a multicondominium association may commingle the operating funds of separate condominiums with the reserve funds of separate condominiums. A manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of a community association as defined in s. 468.431.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) Use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61.

Section 2. To implement the website requirement in section 1 of this act, the Department of Business and Professional Regulation is directed to include within the next condominium association annual fee statement required by s. 718.501(2)(a), Florida Statutes, a notice informing condominium associations of 150 or more units of the requirement to create a website for association documents that is operational on or before July 1, 2018.

## 718.112 Bylaws.——

(1) GENERALLY.

(a) The operation of the association shall be governed by the articles of incorporation if the association is incorporated, and the bylaws of the association, which shall be included as exhibits to the recorded declaration. If one association operates more than one condominium, it shall not be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each declaration after the first, provided that in each case where the articles and bylaws are not so recorded, the declaration expressly incorporates them by reference as exhibits and identifies the book and page of the public records where the first declaration to which they were attached is recorded.

(b) No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.

(2) REQUIRED PROVISIONS. The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(a) *Administration*.

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, unless the condominium has five or fewer units .The board shall consist of not fewer than three members in condominiums with five or fewer units that are not-for-profit corporations. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after receipt of the inquiry. The board’s response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days after its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(b) *Quorum; voting requirements; proxies*.

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners in a residential condominium may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13);for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members in a residential condominium. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association or a nonresidential condominium association.

[[1]](#footnote-1)3. A proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given. Each proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A board or committee member’s participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present. A speaker must be used so that the conversation of such members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings*.

Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting.

Written notice of a meeting at which a nonemergency special assessment, or an amendment to rules regarding unit use, will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 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. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted.

If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association.

However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum periodoftimeforwhichanoticeofameetingisalsorequiredtobephysically posted on the condominium property. Any rule adopted shall, in addition to othermatters,includearequirementthattheassociationsendanelectronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

1. Meetings between the board or a committee and the association’s attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or
2. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings*.

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an associa­tion governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term “candidate” means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate.

Except in a timeshare or nonresidential condominium, or if the staggered 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, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. 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 the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. 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 to be a candidate for board membership and may not be listed on the ballot.

A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a timeshare nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property for posting notices.

In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association.

However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose email addresses are included in the association’s official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. 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. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., 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.

Upon request of a candidate, an information sheet, no larger than 8½ inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast.

There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this subsubparagraph. The board may temporarily fill the vacancy during the period of suspension.

The secretary shall cause the association to retain a director’s written certification or educational certificate for inspection by the members for 5 years after a director’s election or the duration of the director’s uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decision making, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. If 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. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4. a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) Budget meeting.

1. Any meeting at which a proposed annual budget of an association will be considered by the board or unit owners shall be open to all unit owners. At least 14 days prior to such a meeting, the board shall hand deliver to each unit owner, mail to each unit owner at the address last furnished to the association by the unit owner, or electronically transmit to the location furnished by the unit owner for that purpose a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement and such affidavit shall be filed among the official records of the association.

2. a. If a board adopts in any fiscal year an annual budget which requires assessments against unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the association. Unit owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

c. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interest.

(f) Annual budget.

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any if applicable, those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2. a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. 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 each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. arbitr718.301, the developer-controlled association shall may vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size 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.

(g) Assessments.

The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed.

Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

(h) Amendment of bylaws.

1. The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by the owners of not less than two-thirds of the voting interests.

2. 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 in 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, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw \_\_\_\_\_ for present text."

3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

(i) Transfer fees.

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. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) Recall of board members.

Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

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

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting provided that the recall is facially valid. A recalled member must turn over to the board within 10 full business days after the vote any and all records and property of the association in their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting provided that the recall is facially valid. A recalled member must turn over to the board within 5 full business days,any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that there call is not facially valid, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board’s failure to act or challenging the board’s determination on facial validity. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner’s claim is frivolous.

7. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6. When there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(p) *Service providers; conflicts of interest*.—An 921 association, which is not a timeshare condominium association, 922 may not employ or contract with any service provider that is 923 owned or operated by a board member or with any person who has a 924 financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or 926 marriage of a board member or officer. This paragraph does not 927 apply to a service provider in which a board member or officer, 928 or a relative within the third degree of consanguinity by blood 929 or marriage of a board member or officer, owns less than 1 930 percent of the equity shares.

(k) *Arbitration*.

There shall be a provision for mandatory nonbinding arbitration as provided for in s. 718.1255 for any residential condominium.

(l) *Firesafety.*

An association must ensure compliance with the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise builsing as defined under the Florida Fire Prevention Code, the association must retrofit either a fire sprinkler system or an engineered life safety system as specified in the Florida Fire Prevention Code. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium.

The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or an engineered life safety systems before January 1, 2024.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association’s opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

2. 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.

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

5. This paragraph does not apply to timeshare condominium associations, which shall be governed by s. 721.24.

(m) Common elements; limited power to convey.

1. With respect to condominiums created on or after October 1, 1994, the bylaws shall include a provision granting the association a limited power to convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

2. In any case where the bylaws are silent as to the association’s power to convey common elements as described in subparagraph 1., the bylaws shall be deemed to include the provision described in subparagraph 1.

(n) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled accord­ing to law.

(o) Director or officer offenses.—A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association’s funds or property must be removed from office, creating a vacancy in the office to 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. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(3) OPTIONAL PROVISIONS. The bylaws as originally recorded or as amended under the procedures provided therein may provide for the following:

(a) A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.

(b) Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.

(c) Provisions for giving notice by electronic transmission in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.

(d) Other provisions which are not inconsistent with this chapter or with the declaration, as may be desired.

## 718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.——

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

##### NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned owner of a condo­minium unit in ...(name of condominium)... intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quo­rum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reim­bursement of all costs and attorney fees payable from association funds.

...(name and address of petitioning unit owner)...

(2) The notice required by subsection (1) must be provided by the unit owner to the association by certified mail or personal delivery, must be posted in a conspicuous place on the condominium property, and must be provided by the unit owner to every other unit owner of the association by certified mail or personal delivery. The notice must be posted and mailed or deliv­ered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner, except that where a unit owner’s address is not publicly available the notice shall be mailed to the unit.

(3) If the association fails to fill the vacancies, within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the unit owner may proceed with the petition.

(4) If a receiver is appointed, all unit owners shall be given written notice of such appointment as provided in s. 718.127.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

## 718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.——

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

(2) (a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

This paragraph is intended to clarify existing law and applies to associations *existing on July 1, 2018.*

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein.

If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced.

This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 218.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein.

If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1,2018.

(3) A unit owner shall not do anything within his or her unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the association property or condominium property which is to be maintained by the association.

(4) Any unit owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

(5) Each board of administration of a residential condominium shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium, install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. However, a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the associa­tion pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection except upon approval by a majority vote of the voting interests.

(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection author­ized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pur­suant to the declaration of condominium, the mainte­nance, repair, and replacement of such items are the responsibility of the unit owner.

(c) The board may operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.

(d) Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.

(6) An association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the unit owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.

(7) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

(8) The Legislature finds that the use of electric vehicles conserves and protects the state’s environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participationofcondominiumassociationsisessentialtothestate’seffortstoconserve and protect the state’s environmental resources and provide economic savings to drivers. Therefore, the installation of an electric vehicle charging station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner’s limited common element parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01,withintheboundariesofhisorherlimitedcommonelementparking area. The installation of such charging stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing such charging station.

(d) The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.

(e) If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The association may enforce payment of such costs pursuant to s. 718.116.

(f) The association may require the unit owner to:

1. Comply with bonafide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.

2. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof.

3. Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.

4. Provide a certificate of insurance naming the association as an additional insured on the owner’s insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association’s approval to install such charging station.

5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station within 14 days after receiving the association’s insurance premium invoice.

## 718.114 Association powers.——

An association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, are a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113.

The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

## 718.115 Common expenses and common surplus.——

(1) (a) Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium.

However, such common expenses must either have been services or items provided on or after the date control of the association is transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws. Unless the manner of payment or allocation of expenses is otherwise addressed in the declaration of condominium, the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the condominium property by the association, including, but not limited to, fire safety equipment or water and sewer service where a master meter serves the condominium, shall be common expenses whether or not such items or services are specifically identified as common expenses in the declaration of condominium, articles of incorporation, or bylaws of the association.

(b) The common expenses of a condominium within a multicondominium are the common expenses directly attributable to the operation of that condominium. The common expenses of a multicondominium association do not include the common expenses directly attributable to the operation of any specific condominium or condominiums within the multicondominium. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) The common expenses of a multicondominium association may include categories of expenses related to the property or common elements within a specific condominium in the multicondominium if such property or common elements are areas in which all members of the multicondominium association have use rights or from which all members receive tangible economic benefits. Such common expenses of the association shall be identified in the declaration or bylaws as originally recorded or as amended under the procedures provided therein of each condominium within the multicondominium association. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(d) If provided in the declaration, the cost of communications services as defined in chapter 202, information services, or Internet services obtained pursuant to a bulk contract is a common expense. If the declaration does not provide for the cost of such services as a common expense, the board may enter into such a contract, and the cost of the service will be a common expense. The cost for the services under a bulk-rate contract may be allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of common expenses and any contract entered into before July 1, 1998, in which the cost of the service is not equally divided among all unit owners, may be changed by vote of a majority of the voting interests present at a regular or special meeting of the association, to allocate the cost equally among all units. The contract must be for at least 2 years.

1. Any contract made by the board on or after July 1, 1998, may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever occurs first, following the making of the contract, such contract shall be deemed ratified for the term therein expressed.

2. Such contract must provide, and is deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person, or any unit owner receiving supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Families pursuant to s. 414.31, may discontinue the cable or video service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners are not required to pay any common expenses charge related to such service.

If fewer than all members of an association share the expenses of cable or video service, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable or video service.

(e) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condo­minium.

However, if the maintenance, repair, and replacement of the hurri­cane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the cost of the installa­tion of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is not a common expense and shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection appurtenant to the unit. Notwithstanding s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners to maintain, repair, or replace hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code- compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed, other types of code-compliant hurricane protection that comply with the current applicable building code shall receive a credit when the same type of other code compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit.

However, such unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5), and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.

(f) Common expenses include the costs of insurance acquired by the association under the authority of s. 718.111(11), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

(g) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.

(2) Except as otherwise provided by this chapter, funds for payment of the common expenses of a condominium shall be collected by assessments against the units in that condominium in the proportions or percentages provided in that condominium’s declaration. In a residential condominium, or mixed-use condominium created after January 1, 1996, each unit’s share of the common expenses of the condominium and common surplus of the condominium shall be the same as the unit’s appurtenant ownership interest in the common elements.

(3) Common surplus is owned by unit owners in the same shares as their ownership interest in the common elements.

(4) (a)  Funds for payment of the common expenses of a condominium within a multicondominium shall be collected as provided in subsection (2). Common expenses of a multicondominium association shall be funded by assessments against all unit owners in the association in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

(b)  In a multicondominium association, the total common surplus owned by a unit owner consists of that owner's share of the common surplus of the association plus that owner's share of the common surplus of the condominium in which the owner's unit is located, in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

## 718.116 Assessments; liability; lien and priority; interest; collection.——

(1) (a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term “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 unit owner’s liability for unpaid assessments 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.

(b) 1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit’s unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney fees and costs that came due before the association’s acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

(f) The provisions of this subsection are intended to clarify existing law, and shall not be available in any case where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage, Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

(g) For purposes of this subsection, the term “successor or assignee” as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late.

Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(4) If the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

(5) (a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest administrative late fees, and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner’s agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

##### NOTICE OF CONTEST OF LIEN

TO:   (Name and address of association)   You are notified that the undersigned contests the claim of lien filed by you on  ,   (year)  , and recorded in Official Records Book   at Page  , of the public records of   County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this   day of  ,   (year)   .

Signed:   (Owner or Attorney)

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

##### RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $......, hereby waives and releases its lien and right to claim a lien for unpaid assessments through ......,…(year)…, recorded in the Official Records Book ...... at Page ......, of the public records of ...... County, Florida, for the following described real property:

UNIT NO. ...... OF …(NAME OF CONDOMINIUM)…, A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ......, PAGE ......, OF THE PUBLIC RECORDS OF ...... COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,

INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

…(Signature of Authorized Agent)… …(Signature of Witness)…

…(Print Name)… …(Print Name)…

…(Signature of Witness)…

…(Print Name)…

Sworn to (or affirmed) and subscribed before me this ... ... day of .... .., …(year)

…, by …(name of person making statement)….

…(Signature of Notary Public)…

…(Print, type, or stamp commissioned name of Notary Public)…

Personally Known...... OR Produced...... as identification.

(6)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

##### DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the …(type of assessment)… assessment to …(name of association)…. The association intends to foreclose the lien and collect the unpaid amount within 30 days of this

letter being provided to you.

You owe the interest accruing from …(month/year)… to the present. As of the date of this letter, the total amount due with interest is $....... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to …(insert name, addresses, and telephone numbers of association representative)

…………………………………………………..

If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(d) The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(7) A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Within 10 business days after receiving a written or electronic request therefore from a unit owner or the unit owner’s designee, or a unit mortgagee or the unit owner’s designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date or issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:......

2. Name(s) of the unit owner(s) as reflected in the books and records of the association:......

3. Unit designation and address:......

4. Parking or garage space number, as reflected in the books and records of the association:......

5. Attorney’s name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

6. Fee for the preparation and delivery of the estoppel certificate:......

7. Name of the requestor:......

8. Assessment information and other information:

ASSESSMENT INFORMATION:

a. The regular periodic assessment levied against the unit is $...... per… (insert frequency of payment)….

b. The regular periodic assessment is paid through …(insert date paid through)….

c. The next installment of the regular periodic assessment is due … (insert due date)… in the amount of $.......

d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided.

e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the due? …(Yes)… …(No)…. If yes, specify the type and the amount of the fee.

g. Is there any open violation of rule or regulation noticed to the unit owner in the association official records? …(Yes)… …(No)….

h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? …(Yes)… …(No)…. If yes, has the board approved the transfer of the unit? …(Yes)… …(No)….

i. Is there a right of first refusal provided to the members or the association? …(Yes)… …(No)…. If yes, have the members or the association exercised that right of first refusal? …(Yes)… …(No)….

j. Provide a list of, and contact information for, all other associations of which the unit is a member.

k. Provide contact information for all insurance maintained by the association.

l. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person’s successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner’s designee, or a unit mortgagee or the unit mortgagee’s designee, and fails to deliver the estoppel certificate within 10 effective period of the estoppel certificate. business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed $150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, $750.

2. For 26 to 50 units, $1,000.

3. For 51 to 100 units, $1,500.

4. For more than 100 units, $2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payer that is not the unit owner, the fee shall be refunded to that payer within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

(9) (a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

1. If authorized by the declaration, a developer who is offering units for sale may elect to be excused from payment of assessments against those unsold units for a stated period of time after the declaration is recorded. However, the developer must pay common expenses incurred during such period which exceed regular periodic assessments against other unit owners in the same condominium. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a unit in that condominium. If a developer-controlled association has maintained all insurance coverage required by s. 718.111(11)(a), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the association, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their respective successors and assigns, including the developer with respect to units owned by the developer. In the event of such an assessment, all units shall be assessed in accordance with s. 718.115(2).

2. A developer who owns condominium units, and who is offering the units for sale, may be excused from payment of assessments against those unsold units for the period of time the developer has guaranteed to all purchasers or other unit owners in the same condominium that assessments will not exceed a stated dollar amount and that the developer will pay any common expenses that exceed the guaranteed amount. Such guarantee may be stated in the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of the unit owners other than the developer and may provide that, after the initial guarantee period, the developer may extend the guarantee for one or more stated periods. If a developer-controlled association has maintained all insurance coverage required by s. 718.111(11(a), common expenses incurred during a guarantee period, as a result of a natural disaster or an act of God occurring during the same-guarantee period, which are not covered by the proceeds from such insurance, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to units owned by the developer. Any such assessment shall be in accordance with s. 718.115(2) or (4), as applicable.

(b) If the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of unit owners other than the developer, provides for the developer to be excused from payment of assessments under paragraph (a), only regular periodic assessments for common expenses as provided for in the declaration and prospectus and disclosed in the estimated operating budget shall be used for payment of common expenses during any period in which the developer is excused. Accordingly, no funds which are receivable from unit purchasers or unit owners and payable to the association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such common expenses.

(c) If a developer of a multicondominium is excused from payment of assessments under paragraph (a), the developer's financial obligation to the multicondominium association during any period in which the developer is excused from payment of assessments is as follows:

1. The developer shall pay the common expenses of a condominium affected by a guarantee, including the funding of reserves as provided in the adopted annual budget of that condominium, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium.

2. The developer shall pay the common expenses of a multicondominium association, including the funding of reserves as provided in the adopted annual budget of the association, which are allocated to units within a condominium affected by a guarantee and which exceed the regular periodic assessments against all other unit owners within that condominium.

(10) The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 718.111(11), approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(11) (a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 718.116(11), Florida Statutes, the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to … (full address) …, payable to . . . (name) . . . .

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 718.116(11), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

2. The association must mail written notice to the unit owner of the association’s demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant’s landlord. The tenant’s landlord shall provide the tenant a credit against rents due to the landlord in the amount of money paid to the association.

(d) The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

(e) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(f) A court may supersede the effect of this subsection by appointing a receiver.

## 718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenantsmay create economic waste and areas of disrepair which threaten the safety and welfare of the public or cause obsolescence of the property for its intended use and thereby lower property tax values, and it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.

4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.

5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.

6. Preserve the state’s long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium This section applies to all condominiums in this state in existence on or after July 1, 2007.

This section applies to all condominiums in this state in existence on or after July 1, 2007.

(2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.—

(a) Notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or

2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land-use laws or regulations.

(b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units are timeshare units may be terminated only pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail a copy of the proposed plan and a copy of the petition to:

1. If the association has not been dissolved as a matter of law, each member of the board of directors of the association identified in the most recent annual report filed with the Department of State and the registered agent of the association;

2. The managing entity as defined in s. 721.05(22);

3. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or, if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and

4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

The association, if it has not been dissolved as a matter of law, acting as class representative, or the managing entity as defined in s. 721.05(22), any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph.

If no party intervenes to contest the proposed plan within 45 days after the filing of the petition, the petitioner may move the court to enter a final judgment to authorize implementation of the plan of termination.

If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a final judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

(3) OPTIONAL TERMINATION.—The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association subits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 percent or more of the total voting interests of the condominiumhave rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination condominiums in which 75 percent or more of the units are timeshare units.

(c) For purposes of this subsection, the term “bulk owner” means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner’s former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner’s former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner’s former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For a person whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association as of the date the plan of termination is recorded, the fair market value shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term “fair market value” means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit’s share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit’s share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 25 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the division shall authorize the termination, and the termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination pursuant to this subsection.

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

Section 2. The amendments made by this act to s. 718.117, Florida Statutes, are intended to clarify existing law, are remedial in nature and intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Section 3. For the 2017-2018 fiscal year, the sums of $85,006 in recurring funds and $4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and one full-time equivalent position with associated salary.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination.

(5) MORTGAGE LIENHOLDERS.—Notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided in subsection (16). At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

(6) POWERS IN CONNECTION WITH TERMINATION.—The approval of the plan of termination does not terminate the association. It shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in the declaration or bylaws, after approval of the plan the board shall:

(a) Employ directors, agents, attorneys, and other professionals to liquidateor conclude its affairs.

(b) Conduct the affairs of the association as necessary for the liquidation or termination.

(c) Carry out contracts and collect, pay, and settle debts and claims for and against the association.

(d) Defend suits brought against the association.

(e) Sue in the name of the association for all sums due or owed to the association or to recover any of its property.

(f) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes.

(g) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of the association, and execute bills of sale and deeds of conveyance in the name of the association.

(h) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association.

(i) Contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

(7) NATURAL DISASTERS.—

(a) If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the circuit court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the association after a hearing following notice to such persons as the court directs.

Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver. If a receiver is appointed, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as re­ceiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

(b) The receiver shall have all powers given to the board pursuant to the declaration, bylaws, and subsection (6), and any other powers that are necessary to conclude the affairs of the association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order.

The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(a) The association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the association, receivership, or trusteeship and provide copies of the report by regular mail to the unit owners and lienors at the mailing address provided to the association by the unit owners and the lienors.

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j).

(c) The lienors of an association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee.

A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 18 months after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(10) PLAN OF TERMINATION; REQUIRED PROVISIONS.—The plan of termination must specify:

(a) The name, address, and powers of the termination trustee.

(b) A date after which the plan of termination is void if it has not been recorded.

(c) The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which shall be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided in the declaration.

(d) The interests of the respective unit owners in any proceeds from the sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12). If, pursuant to the plan of termination, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.

(e) Any interests of the respective unit owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12).

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION, WITHDRAWAL ERRORS.—

(a) Unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess that portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and conditions of possession. In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener’s error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods:

1. The respective values of the units based on the fair-market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser’s records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner’s family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner’s unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects

3. All costs of removing the owner or the owner’s family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner’s family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner’s family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(13) TERMINATION TRUSTEE.—The association shall serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the board pursuant to the declaration, bylaws, and subsection (6). If the association is not the termination trustee, the trustee’s powers shall be coextensive with those of the association to the extent not prohibited in the plan of termination or the order of appointment. If the association is not the termination trustee, the association shall transfer any association property to the trustee. If the association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the association.

(14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination is pursuant to a plan of termination under subsection (2) or subsection (3), title to the condominium property being terminated vests in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(15) NOTICE.—

(a) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.

(b) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration pursuant to s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(b) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good-faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a unit owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney fees and costs.

(c) The proceeds from any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets shall be distributed in the following priority:

1. To pay the reasonable termination trustee’s fees and costs and accounting fees and costs.

2. To lienholders of liens recorded prior to the recording of the declaration.

3. To purchase-money lienholders on units to the extent necessary to satisfy their liens. However, the distribution may not exceed a unit owner’s share of the proceeds.

4. To lienholders of liens of the association which have been consented to under s. 718.121(1).

5. To creditors of the association, as their interests appear.

6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor as provided in paragraph (b).

7. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

8. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

(d) After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(e) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to paragraph (c).

(f) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

(18) ASSOCIATION STATUS.—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium by the termination trustee, or the trustee’s successor in interest, for the terminated property or any portion thereof. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

(20) EXCLUSION.—This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7).

## 718.118 Equitable relief.——

In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

## 718.119 Limitation of liability.——

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the declaration, and bylaws.

(2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his or her pro rata share of that liability in the same percentage as his or her interest in the common elements, and then in no case shall that liability exceed the value of his or her unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners, and they shall have the right to intervene and defend.

## 718.120 Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates.——

(1) Ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. No ad valorem tax, benefit tax, or special assessment, including those made by special districts, drainage districts, or water management districts, may be separately assessed against recreational facilities or other common elements if such facilities or common elements are owned by the condominium association or are owned jointly by the owners of the condominium parcels. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, upon foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Condominium property divided into fee timeshare real property shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

## 718.121 Liens.——

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature are valid against the condominium property as a whole except with the unanimous consent of the unit owners. During this period, liens may arise or be created only against individual condominium parcels.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of an electronic vehicle charging station pursuant to s. 718.113(8) may not be the basis for filing a lien under part 1 of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien of the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his or her condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his or her condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner’s address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

##### NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit ...... of …(name of association)…

The following amounts are currently due on your account to …(name of association)…, and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association’s notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due …(dates)… $.......

Late fee, if applicable $.......

Interest through …(dates)…\* $.......

Certified mail charges $.......

Other costs $.......

TOTAL OUTSTANDING $.......

\*Interest accrues at the rate of ...... percent per annum.

## 718.122 Unconscionability of certain leases; rebuttable presumption.——

(1) A lease pertaining to use by condominium unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners, other than the developer, to represent their interests;

(b) The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

(c) The lease requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

(d) The lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

(e) The lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 21 years or more;

(f) The lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of a lien upon individual condominium units of the condominium to secure claims for rent;

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved, provided that, for purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

(h) The lease provides for a periodic rental increase; and

(i) The lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease.

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(3) Any provision of the Florida Statutes to the contrary notwithstanding, neither the statute of limitations nor laches shall prohibit unit owners from maintaining a cause of action under the provisions of this section.

## 718.1224 Prohibition against SLAPP suits----

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or “SLAPP suits,” as they are typically referred to, have occurred when association members are sued by individuals, business entities, or governmental enti­ties arising out of a condominium unit owner’s appearance and presentation before a governmental entity on matters related to the condominium association.

However, it is the public policy of this state that governmental enti­ties, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in the state’s institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by govern­mental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, and ensure the continuation of repre­sentative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term “governmental entity” means the state, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condo­minium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmen­tal entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) A condominium unit owner sued by a governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmen­tal entity’s, business organization’s or individual’s lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affida­vits. As soon as practicable, the court shall set a hearing on the petitioner’s motion, which shall be held at the earliest possible time after the filing of the governmental entity’s, business organization’s, or individual’s response. The court may award the condominium unit owner sued by the governmen­tal entity, business organization, or individual actual damages arising from the governmental entity’s, individual’s, or business organization’s violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reason­able attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(4) Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

## 718.1225 Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.——

It is the intent of the Legislature that the provisions of Title VI of Pub. L. No. 96-399, other than the exceptions stated in s. 611 of that act, shall not apply in this state.

## 718.123 Right of owners to peaceably assemble.——

(1) All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners in the condominium or condominiums served thereby and their invited guests for the use intended for such common elements, common areas, and recreational facilities, subject to the provisions of s. 718.106(4). The entity or entities responsible for the operation of the common elements, common areas, and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas, and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any condominium document or rule which operates to deprive the owner of such rights.

## 718.1232 Cable television service; resident's right to access without extra charge.——

No resident of any condominium dwelling unit, whether tenant or owner, shall be denied access to any available franchised or licensed cable television service, nor shall such resident or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single-family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

## 718.124 Limitation on actions by association.——

The statute of limitations for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

## 718.125 Attorney's fees.——

If a contract or lease between a condominium unit owner or association and a developer contains a provision allowing attorney fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

## 718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.——

**[(See Also 61B-45, F.A.C.)](#_Mandatory_Non-Binding_Arbitration_1)**

(1) DEFINITIONS. As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) VOLUNTARY MEDIATION. Voluntary mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) LEGISLATIVE FINDINGS.

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES. The Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents’ answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division.

Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation.

Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator’s decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction.

The parties may seek to recover any costs and attorneys fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and, reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator’s failure to rener a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed.

If the petition for enforcement is granted, the petitioner shall recover reasonable attorney fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

(5) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division’s rules for recall arbitration disputes.

(6) APPLICABILITY.—This section does not apply to a nonresidential condominium unless otherwise specifically provided for in the declaration of the nonresidential condominium.

## 718.1256 Condominiums as residential property.—

For the purpose of property and casualty insurance risk classification, condominiums shall be classed as residential property.

## 718.1265 Association emergency powers.----

(1) To the extent allowed by law and unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with the provisions of s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condomin­ium is located, may, but is not required to, exercise the following powers:

(a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium property or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated as provided in this paragraph .

(b) Cancel and reschedule any association meeting.

(c) Name as assistant officers persons who are not directors, which assis­tant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the inca­pacity or unavailability of any officer of the association.

(d) Relocate the association’s principal office or designate alternative principal offices.

(e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible for, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has con­tracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners’ family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

## 718.127 Receivership notification.—

Upon the appointment of a receiver by a court for any reason relating to a condominium association, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

## 718.128 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.

(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.

(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.

(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.

(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).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association

## 718.129 Law Enforcement Vehicles.—

An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or who is a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or the tenant, guest, or invitee of the unit owner, otherwise has a right to park.

# Part II Rights and Obligations of Developers

## 718.202 Sales or reservation deposits prior to closing.——

(1) (See also [Chapter 61B-17.002](#_61B-17.002_Procedure_for); [.009](#_61B-17.002_Procedure_for), F.A.C.)If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments which are in excess of the 10 percent of the sale price described in subsection (1) and which have been received prior to completion of construction by the developer from the buyer on a contract for purchase of a condominium parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun.

He or she may use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) The term "completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) The failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection.

The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. The developer shall maintain separate records for each condominium or proposed condominium for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement.

A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an escrow account, deposits of funds into escrow, and withdrawal of funds from escrow is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds in an escrow account is prima facie evidence of an intentional and purposeful violation of this section.

(8) Every escrow account required by this section shall be established with a bank; a savings and loan association; an attorney who is a member of The Florida Bar; a real estate broker registered under chapter 475; a title insurer authorized to do business in this state, acting through either its employees or a title insurance agent licensed under chapter 626; or any financial lending institution having a net worth in excess of $5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Every escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent. Escrow funds may be invested only in securities of the United States or an agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

(9) Any developer who is subject to the provisions of this section is not subject to the provisions of s. 501.1375.

(10) Nothing in this section shall be construed to require any filing with the division in the case of condominiums other than residential condominiums.

(11) All funds deposited into escrow pursuant to subsection (1) or subsection (2) may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, the escrow agent must maintain separate accounting records for each purchaser and for amounts separately covered under subsections (1) and (2) and, if applicable, released to the developer pursuant to subsection (3). Separate accounting by the escrow agent of the escrow funds constitutes compliance with this section even if the funds are held by the escrow agent in a single escrow account. It is the intent of this subsection to clarify existing law.

## 718.203 Warranties.——

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor, and all subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

(7) Residential condominiums may be covered by an insured warranty program underwritten by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter; to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

# Part III Rights and Obligations of Association

## 718.301 Transfer of association control; claims of defect by association.——

[(See also Chapter 61B-17.0012, F.A.C.)](#_61B-17.0012_Declaration;_Filing.)

(1) If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, recordation of the declaration for the first condominium it operates;

or, in the for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of an election for the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a) 1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created prior to the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer’s agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.

(g) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year prior to the date the unit owners other than the developer took control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

( l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(p) A report included in the official records, 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:

1. Roof.

2. Structure

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

(5) If, during the period prior to the time that the developer relinquishes control of the association pursuant to subsection (4), any provision of the Condominium Act or any rule promulgated thereunder is violated by the association, the developer is responsible for such violation and is subject to the administrative action provided in this chapter for such violation or violations and is liable for such violation or violations to third parties. This subsection is intended to clarify existing law.

(6) Prior to the developer relinquishing control of the association pursuant to subsection (4), actions taken by members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

(7) In any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chapter 455, chapter 471, chapter 481, chapter 489, or chapter 633, such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

(8) [**(See Also 61B-23.003, F.A.C.)**](#_61B-23.003__Transition) The division has authority to adopt rules pursuant to the Administrative Procedure Act to ensure the efficient and effective transition from developer control of a condominium to the establishment of a unit-owner controlled association.

## 718.302 Agreements entered into by the association.——

(1) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer:

(a) If the association operates only one condominium and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the voting interests in the condominium other than the voting interests owned by the developer.

(b) If the association operates more than one condominium and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the voting interests in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the condominium other than the voting interests owned by the developer. No grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one condominium, and operated by more than one association, may be canceled except pursuant to paragraph (d).

(c) If the association operates more than one condominium and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all condominiums operated by the association other than the voting interests owned by the developer.

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer.

(2) Any grant or reservation made by a declaration, lease, or other document, or any contract made by the developer or association prior to the time when unit owners other than the developer elect a majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer’s heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

(3) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall not be in conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(6) Any action to compel compliance with the provisions of this section or of s. 718.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 718.301, the prevailing party is entitled to recover reasonable attorney fees.

## 718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.——

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(f) Discloses any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

(4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable television operators; retail store operators; businesses; restaurants; or similar vendors.

(5) A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be cancelled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

## 718.3026 Contracts for products and services; in writing; bids; exceptions.—

Associations with 10 or fewer units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association on behalf of any condominium operated by the association in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2) (a) Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to the provisions of this section.

(b) Nothing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section shall not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained herein shall excuse a party contracting to provide maintenance or management services from compliance with s. 718.3025.

## 718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If a director or an officer, or a relative of a director or an officer, proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. The association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(3) If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

## 718.303 Obligations of owners and occupants; remedies ; waiver; levy of fine against unit by association.——

(1) Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney fees.

A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection may not be deemed to be actions for specific performance.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instruction given in writing by a unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a 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. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days’ written notice to the unit owner and, if applicable, its occupant licensee or invitee of the unit owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve, the proposed fine or suspension by majority rule, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner. (4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit’s occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall 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, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the units occupant, licensee, or invitee by mail or hand delivery.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member’s tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by a member.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

# Part IV Special Types of Condominiums

## 718.401 Leaseholds.——

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(d) 1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f) 1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure.

The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

## 718.4015 Condominium leases; escalation clauses.——

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to condominiums for which the declaration of condominium was recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to condominiums for which the declaration of condominium was recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 711.231 or former s. 718.401(8); and it prohibits any further escalation of rental fees after October

1, 1988, pursuant to escalation clauses in leases related to condominiums for which the declaration was recorded prior to June 4, 1975.

(3) The provisions of this section do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

## 718.402 Conversion of existing improvements to condominium.——

A developer may create a condominium by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter. A developer of a residential condominium must also comply with part VI of this chapter, but the failure to comply will not affect the validity of the condominium.

## 718.403 Phase condominiums.——

[(See also Chapter 61B-17.001, F.A.C.)](#_61B-17.001_Developer,_Filing;)

(Below: (1)-(7) [See also Chapter 61B-17.003, F.A.C.](#_61B-17.003_Phase_Condominium))

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(a) All phases must be added to the condominium within 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the 7-year period pursuant to paragraph (b).

(b) An amendment to extend the 7-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to s. 718.110(1)(a). An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.

(c) An amendment must describe the time period within which all phases must be added to the condominium and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

(d) An amendment that extends the 7-year period pursuant to this section is not subject to the requirements of s. 718.110(4).

(2) The original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer, shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium. The plot plan may be modified by the developer as to unit or building types but, in a residential condominium, only to the extent that such changes are described in the declaration. If provided in the declaration, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the decision not to add one or more additional phases. Notice shall be by first-class mail addressed to each owner at the address of his or her unit or at his or her last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he or she fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding other provisions of this chapter, any amendment by the developer which adds any land to the condominium shall be consistent with the provisions of the declaration granting such right and shall contain or provide for the following matters:

(a) A statement submitting the additional land to condominium ownership as an addition to the condominium.

(b) The legal description of the land being added to the condominium.

(c) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the condominium, to ensure that no unit in the condominium, including the additional land, will bear the same designation as any other unit.

(d) A survey of the additional land and a graphic description of the improvements in which any units are located and a plot plan thereof and a certificate of a surveyor, in conformance with s. 718.104(4)(e).

(e) The undivided share in the common elements appurtenant to each unit in the condominium, stated as a percentage or fraction which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original declaration of condominium.

(f) The proportion or percentage of, and the manner of sharing, common expenses and owning common surplus, which for a residential unit must be the same as the undivided share in the common elements.

An amendment which adds phases to a condominium does not require the execution of such amendment or consent thereto by unit owners other than the developer, unless the amendment permits the creation of timeshare estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) An amendment to the declaration of condominium which adds land to the condominium shall be recorded in the public records of the county where the land is located and shall be executed and acknowledged in compliance with the same requirements as for a deed. All persons who have record title to the interest in the land submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the amendment. Every such amendment shall comply with the provisions of s. 718.104(3).

(8) Upon recording the declaration of condominium or amendments adding phases pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(9) Paragraphs (2)(b)-(f) and subsection (8) do not apply to nonresidential condominiums.

## 718.404 Mixed-use condominiums.——

When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

(3) In the declaration of condominium for mixed-use condominiums created after January 1, 1996, the ownership share of the common elements assigned to each unit shall be based either on the total square footage of each unit in uniform relationship to the total square footage of each other unit in the condominium or on an equal fractional basis.

(4) The provisions of this section shall not apply to timeshare condominiums.

## 718.405 Multicondominiums; multicondominium associations.-

(1) An association may operate more than one condominium. For multicondominiums created on or after July 1, 2000, the declaration for each condominium to be operated by that association must provide for participation in a multicondominium, in conformity with this section, and disclose or describe:

(a) The manner or formula by which the assets, liabilities, common surplus, and common expenses of the association will be apportioned among the units within the condominiums operated by the association, in accordance with s. 718.104(4)(g) or (h), as applicable.

(b) Whether unit owners in any other condominium, or any other persons, will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium, and, if so, the specific formula by which the other users will share the common expenses related to those facilities or amenities.

(c) Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased by, or dedicated by a recorded plat to the association but which are not included within any condominium operated by the association. The developer may reserve the right to add additional facilities or amenities if the declaration and prospectus for each condominium to be operated by the association contains the following statement in conspicuous type and in substantially the following form:

RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

(d) The voting rights of the unit owners in the election of directors and in other multicondominium association affairs when a vote of the owners is taken, including, but not limited to, a statement as to whether each unit owner will have a right to personally cast his or her own vote in all matters voted upon.

(2) If any declaration requires a developer to convey additional lands or facilities to a multicondominium association and the developer fails to do so within the time specified, or within a reasonable time if none is specified in the declaration, any unit owner or the association may enforce that obligation against the developer or bring an action against the developer for specific performance or for damages that result from the developer's failure or refusal to convey the additional lands or facilities.

(3) The declaration for each condominium to be operated by a multicondominium association may not, at the time of the initial recording of the declaration, contain any provision with respect to allocation of the association's assets, liabilities, common surplus, or common expenses which is inconsistent with this chapter or the provisions of a declaration for any other condominium then being operated by the multicondominium association.

(4) This section does not prevent or restrict the formation of a multicondominium by the merger or consolidation of two or more condominium associations. Mergers or consolidations of associations shall be accomplished in accordance with this chapter, the declarations of the condominiums being merged or consolidated, and chapter 617. Section 718.110(4) does not apply to amendments to declarations necessary to effect a merger or consolidation. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

## 718.406 Condominiums created within condominium parcels.—

(1) Unless otherwise expressed in the declaration of condominium, if a condominium is created within a condominium parcel, the term:

(a) “Primary condominium” means any condominium that is not a secondary condominium and contains one or more subdivided parcels.

(b) “Primary condominium association” means any entity that operates a primary condominium.

(c) “Primary condominium declaration” means the instrument or instruments by which a primary condominium is created, as they are from time to time amended.

(d) “Secondary condominium” means one or more condominium parcels that have been submitted to condominium ownership pursuant to a secondary condominium declaration.

(e) “Secondary condominium association” means any entity responsible for the operation of a secondary condominium.

(f) “Secondary condominium declaration” means the instrument or instruments by which a secondary condominium is created, as they are from time to time amended.

(g) “Secondary unit” means a unit that is part of a secondary condominium.

(h) “Subdivided parcel” means a condominium parcel in a primary condominium that has been submitted to condominium ownership pursuant to a secondary condominium declaration.

(2) Unless otherwise provided in the primary condominium declaration, if a condominium parcel is a subdivided parcel, the secondary condominium association responsible for operating the secondary condominium upon the subdivided parcel shall act on behalf of all of the unit owners of secondary units in the secondary condominium and shall exercise all rights of the secondary unit owners in the primary condominium association, other than the right of possession of the secondary unit. The secondary condominium association shall designate a representative who shall cast the vote of the subdivided parcel in the primary condominium association and, if no person is designated by the secondary condominium association to cast such vote, the vote shall be cast by the president of the secondary condominium association or the designee of the president.

(3) Unless otherwise provided in the primary condominium declaration as originally recorded, no secondary condominium may be created upon any condominium parcel in the primary condominium, and no amendment to the primary condominium declaration may permit secondary condominiums to be created upon parcels in the primary condominium, unless the record owners of a majority of the condominium parcels join in the execution of the amendment.

(4) If the primary condominium declaration permits the creation of a secondary condominium and a condominium parcel in the primary condominium is being submitted for condominium ownership to create a secondary condominium upon the primary condominium parcel, the approval of the board of administration of the primary condominium association is required in order to create the secondary condominium on the primary condominium parcel. Unless otherwise provided in the primary condominium declaration, the owners of condominium parcels in the primary condominium that will not be part of the proposed secondary condominium and the holders of liens upon such primary condominium parcels shall not have approval rights regarding the creation of the secondary condominium or the contents of the secondary condominium declaration being submitted.

Only the board of administration of the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and the contents of the secondary condominium declaration. In order for the recording of the secondary condominium declaration to be effective to create the secondary condominium, the board of administration of the primary condominium association, the owner of the subdivided parcel, and all holders of liens on the subdivided parcel must execute the secondary condominium declaration for the purpose of evidencing their approval.

(5) An owner of a secondary unit is subject to both the primary condominium declaration and the secondary condominium declaration.

(6) The primary condominium association may provide insurance required by s. 718.111(11) for common elements and other improvements within the secondary condominium if the primary condominium declaration permits the primary condominium association to provide such insurance for the benefit of the condominium property included in the subdivided parcel, in lieu of such insurance being provided by the secondary condominium association.

(7) Unless otherwise provided in the primary condominium declaration, the board of administration of the primary condominium association may adopt hurricane shutter or hurricane protection specifications for each building within which subdivided parcels are located and govern any subdivided parcels in the primary condominium.

(8) Any unit owner of, or holder of a first mortgage on, a secondary unit may register such unit owner’s or mortgagee’s interest in the secondary unit with the primary condominium association by delivering written notice to the primary condominium association. Once registered, the primary condominium association must provide written notice to such secondary unit owner and his, her, or its first mortgagee at least 30 days before instituting any foreclosure action against the subdivided parcel in which the secondary unit owner and his, her, or its first mortgagee hold an interest for failure of the subdivided parcel owner to pay any assessments or other amounts due to the primary condominium association. A foreclosure action against a subdivided parcel is not effective without an affidavit indicating that written notice of the foreclosure was timely sent to the names and addresses of secondary unit owners and first mortgagees registered with the primary condominium association pursuant to this subsection.

The registered secondary unit owner or mortgagee has a right to pay the proportionate amount of the delinquent assessment attributable to the secondary unit in which the registered unit owner or mortgagee holds an interest. Upon such payment, the primary condominium association is obligated to promptly modify or partially release the record of lien on the primary condominium association so that the lien no longer encumbers such secondary unit. Alternatively, a registered secondary unit owner or mortgagee may pay the amount of all delinquent assessments attributed to the subdivided parcel and seek reimbursement for all such amounts paid and all costs incurred from the secondary condominium association, including, without limitation, the costs of collection other than the share allocable to the secondary unit on behalf of which such payment was made.

(9) In the event of a conflict between the primary condominium declaration and the secondary condominium declaration, the primary condominium declaration controls.

(10) All common expenses due to the primary condominium association with respect to a subdivided parcel are a common expense of the secondary condominium association and shall be collected by the secondary condominium association from its members and paid to the primary condominium association.

# Part V Regulation and Disclosure Prior to Sale of Residential Condominiums

## 718.501 Authority, responsibility and duties of Division of Florida Condominiums, Timeshares and Mobile Homes.——

**(See Also 61B-17; 61B-20; 61B-25; 61B-40 F.A.C.)**

(See also Chapter 61B-17.005, F.A.C.; 61B-21.003)

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a) 1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable Cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. [(See also Chapter 61B-17.002; .009, F.A.C.)](#_61B-17.0012_Declaration;_Filing.)

The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. [(See also 61B-20.006)](#_61B-20.006_Enforcement_Resolution)The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time.

The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer or owner-controlled association, the size of the association, and other factors.

The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) **(See Also 61B-17; 61B-18; 61B-21; 61B-22; 61B-23.003, .0051; 61B-40; 61B-50 F.A.C.)** The division may adopt rules to administer and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division’s discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts.

However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint.

However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred.

If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers, bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department’s investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s)  The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement.

The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2) (a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund as provided by law.

## 718.5011 Ombudsman; appointment; administration.—

(1) There is created an Office of the Condominium Ombudsman, to be located for administrative purposes, within the Division of Florida Condominiums, Timeshares and Mobile Homes. The functions of the office shall be funded by the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund. The ombudsman shall be a bureau chief of the division and the office shall be set within the division in the same manner as any other bureau is staffed and funded.

(2) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman’s office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

## 718.5012 Ombudsman; powers and duties.—

The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(1) To have access to and use of all files and records of the division.

(2) To employ professional and clerical staff as necessary for the efficient operation of the office.

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

(6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.

(7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.

(8) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

(9) To assist with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.

(10)  Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

## 718.5014 Ombudsman location.—

The ombudsman shall maintain his or her principal office in Leon County on the premises of the division or, if suitable space cannot be provided there, at another place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

## 718.50152 – Offices

[(See also 61B-20.006)](#_61B-20.006_Enforcement_Resolution)

(1)  The executive offices of the division shall be established and maintained in Tallahassee.

(2)  The division may establish and maintain branch offices.

## 718.50153 Payment of per diem, mileage, and other expenses to division employees.—

[(See also 61B-21.003)](#_61B-21.003_Enforcement_Resolution)

The amount of per diem and mileage and expense money paid to employees shall be as provided in s. 112.061, except that the division shall establish by rule the standards for reimbursement of actual verified expenses incurred in connection with an on-site review or investigation.

## 718.50154 Seal and authentication of records.—

The division shall adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, shall be prima facie evidence of the records in all the courts of this state.

## 718.50155 Service of process.—

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service may be made and shall be binding upon the defendant or respondent if:

(a) The division, which is acting as the petitioner or plaintiff immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his or her last known address, and

(b) The division files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over him or her cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or his or her successor which grows out of the conduct and which is brought by the division under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

## 718.502 Filing prior to sale or lease.——

(See also Chapter 61B-17.001; .002; .005; .006; .0011, F.A.C.)

(1) (a) A developer of a residential condominium or mixed-use condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(b) A developer may not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules adopted by the division and until the division notifies the developer that the filing is proper and the developer prepares and delivers all documents required by s. 718.503(1)(b) to the prospective buyer.

(c) [**(See also:**  **61B-17)**](#_61B-17.001_Developer,_Filing;) The division by rule may develop filing, review, and examination requirements and relevant timetables to ensure compliance with the notice and disclosure provisions of this section.

(2) (a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed, a developer shall not offer a contract for purchase of a unit or lease of a unit for more than 5 years.

However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida, Condominiums, Timeshares and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of $250. Reservations shall not be taken on a proposed condominium unless the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a down payment on the purchase price at the time a contract is signed by the purchaser if provided in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase agreement or binding agreement for a lease of more than 5 years.

2. A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase or sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) [(See also Chapter 61B-17.003; .006, F.A.C.)](#_61B-17.003_Phase_Condominium)Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of $20 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a condominium shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event, later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to $100 per filing, with the exact fee to be set by division rule.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he or she filed.

(5) In addition to those disclosures described by ss. 718.503 and 718.504, the division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering.

## 718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.——

[(See also Chapter 61B-17.0012; .002; 006; .0011, F.A.C.)](#_61B-17.001_Developer,_Filing;)

(1) DEVELOPER DISCLOSURE.

(a) Contents of contracts.

Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. Contain the following caveat in conspicuous type on the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type:

THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES. The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIME-SHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIME-SHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(b) Copies of documents to be furnished to prospective buyer or lessee.

Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section.

The developer may not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer’s agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

(c) Subsequent estimates; when provided.—If the closing on a contract occurs more than 12 months after the filing of the offering circular with the division, the developer shall provide a copy of the current estimated operating budget of the association to the buyer at closing, which shall not be considered an amendment that modifies the offering provided any changes to the association’s budget from the budget given to the buyer at the time of contract signing were the result of matters beyond the developer’s control. Changes in budgets of any master association, recreation association, or club and similar budgets for entities other than the association shall likewise not be considered amendments that modify the offering. It is the intent of this paragraph to clarify existing law.

(2) NONDEVELOPER DISCLOSURE.(See also Chapter 61B-17.003, F.A.C.)

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by s. 718.111, and the document entitled “Frequently Asked Questions and Answers” required by s. 718.504. On and after January 1, 2009, the prospective purchaser shall also be entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective pur­chaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the associ­ation on behalf of, and in the best interests of, the owners.

2. The board’s responsibility to provide advance notice of board and mem­bership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to mainte­nance of the condominium property.

5. The responsibility of the board and owners to abide by the condomin­ium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.

6. Owners’ rights to inspect and copy association records and the limita­tions on such rights.

7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board’s power and authority.

8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.

9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.

10. The voting rights of owners.

11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicu­ous type: “This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association’s board of administration prevail over the contents of this publication.”

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED

QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES.

## 718.504 Prospectus or offering circular.——

[(See also Chapter 61B-17.002; .006; .0011, F.A.C.)](#_61B-17.002_Procedure_for)

Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled “Frequently Asked Questions and Answers,” which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5) (a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f) 1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type:

THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager:

THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER). Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included:

THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD. Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included:

THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED. Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form:

THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM. Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included:

BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM. Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium.

If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(See also Chapter 61B-17.001; .002, F.A.C.)

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves.

1. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type: THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association’s estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17).

(25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with this chapter.

(26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

(27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.

(28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

## 718.505 Good faith effort to comply.——

[(See also Chapter 61B-17.005; .006, F.A.C.)](#_61B-17.005_Examination_of)

If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

## 718.506 Publication of false and misleading information.——

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 718.503, the prevailing party shall be entitled to recover reasonable attorney fees.

## 718.507 Zoning and building laws, ordinances, and regulations.——

All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the condominium form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

## 718.508 Regulation by Division of Hotels and Restaurants.——

In addition to the authority, regulation, or control exercised by the Division of Florida Condominiums, Timeshares and Mobile Homes pursuant to this act with respect to condominiums, buildings included in a condominium property are subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided in chapter 399.

## 718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—

(1) There is created within the State Treasury the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund to be used for the administration and operation of this chapter and chapters 718, 719, 721, and 723 by the division.

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order shall be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to each category of business covered by this trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses which may be used to determine fees charged by the division. This subsection shall operate pursuant to the provisions of s. 215.20.

# Part VI Conversions to Condominium

## 718.604 Short title.——

This part shall be known and may be cited as the "Roth Act" in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

## 718.606 Conversion of existing improvements to condominium; rental agreements.——

When existing improvements are converted to ownership as a residential condominium:

(1) (a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2) (a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 718.402(3) Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

## 718.608 Notice of intended conversion; time of delivery; content.——

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2) (a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by (name of developer), the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer. If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer).

6. If you have continuously been a resident of these apartments during the last 180 days:

a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7. If you have any questions regarding this conversion or the Condominium Act, you may contact the developer or the state agency which regulates condominiums: The Division of Florida Condominiums, Timeshares and Mobile Homes, (Tallahassee address and telephone number of division).

(b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 718.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 718.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division, not to exceed $50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential condominium, each developer shall file with the division and receive approval of a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of $100.

## 718.61 Notices.——

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

## 718.612 Right of first refusal.——

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer.

The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages.

In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

## 718.614 Economic information to be provided.——

The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

## 718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.——

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall prepare a report that discloses the condition of the improvements and the condition of certain components and their current estimated replacement costs as of the date of the report.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3) (a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.

2. Structure.

3. Fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool.

9. Seawalls, pilings, and docks.

10. Pavement and concrete, including roadways, walkways, and parking areas.

11. Drainage systems.

12. Irrigation systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component as of the date of the report.

2. The estimated remaining useful life of the component as of the date of the report.

3. The estimated current replacement cost of the component as of the date of the report, expressed:

a. As a total amount; and

b. As a per-unit amount, based upon each unit's proportional share of the common expenses.

4. The structural and functional soundness of the component.

(c) Each unit owner and the association are third-party beneficiaries of the report.

(d) A supplemental report shall be prepared for any structure or component that is renovated or repaired after completion of the original report and prior to the recording of the declaration of condominium. If the declaration is not recorded within 1 year after the date of the original report, the developer shall update the report annually prior to recording the declaration of condominium.

(e) The report may not contain representations on behalf of the development concerning future improvements or repairs and must be limited to the current condition of the improvements.

(4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

## 718.618 Converter reserve accounts; warranties.——

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a) 1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table.

The denominator of the fraction shall be determined based on the roof type, as follows:

**Roof Type……………………………………….Numerator….... Denominator**

Built-up roof without insulation 04 05

Built-up roof with insulation 04 05

Cement tile roof 45 50

Asphalt shingle roof 14 15

Copper roof

Wood shingle roof 09 10

All other types 18 20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

(2) (a) The developer shall fund the reserve account required by subsection (1), on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of converter reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds, as provided in this section, is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, it is determined by three-fourths of the voting interests in the condominium to expend the funds for other purposes.

(4) The developer shall establish the reserve account, as provided in this section, in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional converter reserve accounts. The amount of funding shall be the product of the estimated current replacement cost of a component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which is the age of the component in years and the denominator of which is the total estimated life of the component in years.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended.,. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential condominium may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 718.503 or s. 718.504, as applicable, with the division prior to the effective date of this law, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I.

2. Gives a notice of intended conversion.

(9) This section applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. In such circumstances, s. 718.203 does not apply.

(10) A developer who sells a condominium parcel that is subject to this part shall disclose in conspicuous type in the contract of sale whether the developer has established converter reserve accounts, provided a warranty of fitness and merchantability, or posted a surety bond for purposes of complying with this section.

## 718.62 Prohibition of discrimination against nonpurchasing tenants.——

When existing improvements are converted to condominium, tenants who have not purchased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

## 718.621 Rulemaking authority.-----

The division is authorized to adopt rules pursuant to the Administrative Procedure Act to administer and ensure compliance with developers’ obligations with respect to condominium conversions concerning the filing and noticing of intended conversion, rental agreement extensions, rights of first refusal, and disclosure and post-purchase protections.

## 718.622 Saving clause.——

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 718.606, 718.608, and 718.61. Tenants given such notices shall have a right of first refusal as provided by s. 718.612.

(2) The disclosure provided by s. 718.616 and required by ss. 718.503 and 718.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 718.503 and 718.504.

(3) The provisions of s. 718.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I of this chapter, and

2. Gives a notice of intended conversion.

### Part VII Distressed Condominium Relief

## 718.701 Short title.—

This part may be cited as the “Distressed Condominium Relief Act.”

## 718.702 Legislative intent.—

(1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.

(2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association due to the resulting shortage of assessment moneys available for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erodes property values. The Legislature finds that individuals and entities within this state and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential successor purchaser having unknown and unquantifiable risks that the potential purchaser is unwilling to accept. As a result, condominium projects stagnate, leaving all parties involved at an impasse and without the ability to find a solution.

(3) The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.

## 718.703 Definitions.—As used in this part, the term:

(1) “Bulk assignee” means a person who is not a bulk buyer and who:

(a) Acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707; and

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (2), as set forth in the declaration of condominium or this chapter:

1. By a written instrument recorded as part of or as an exhibit to the deed;

2. By a separate instrument recorded in the public records of the county in which the condominium is located; or

3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2).

(2) “Bulk buyer” means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights:

(a) The right to conduct sales, leasing, and marketing activities within the condominium;

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer’s acquisition of the units; and

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

## 718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(1) A bulk assignee is deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter upon its acquisition of title to units and continuously thereafter, except that it is not liable for:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or

2. Provide implied warranties on any portion of the condominium property except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(c) The requirement to provide the association with a cumulative audit of the association’s finances from the date of formation of the condominium association as required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the period during which the bulk assignee elects or appoints a majority of the members of the board of administration.

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects or appoints a majority of the members of the board of administration.

(e) Any liability for or arising out of the developer’s failure to fund previous assessments or to resolve budgetary deficits in relation to a developer’s right to guarantee assessments, except as otherwise provided in subsection (2).

The bulk assignee is responsible only for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the developer obligations described in paragraphs (a)-(e).

(2) A bulk assignee assigned the developer right to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee upon its acquisition of title to the units and continuously thereafter, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving such assignment, or a bulk buyer, does not assume and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments due on or after acquisition of the units in the same manner as all other owners of condominium parcels or as otherwise provided in s. 718.116.

(3) A bulk buyer is liable for the duties and responsibilities of a developer under the declaration and this chapter only to the extent that such duties or responsibilities are expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) By a person who would be considered an insider under s. 726.102.

(5) An assignment of developer rights to a bulk assignee may be made by a developer, a previous bulk assignee, a mortgagee or assignee who has acquired title to the units and received an assignment of rights, or a court acting on behalf of the developer or the previous bulk assignee if such developer rights are held by the predecessor in title to the bulk assignee. At any particular time, there may not be more than one bulk assignee within a condominium; however, there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights in addition to those rights described in s. 718.703(2), the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located, and any subsequent purported bulk assignee may still qualify as a bulk buyer.

## 718.705 Board of administration; transfer of control.—

(1) If, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board of administration, for purposes of determining the timing for transfer of control of the board of administration of the association, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

(2) Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee must relinquish control of the association pursuant to s. 718.301 and this part, as if the bulk assignee were the developer.

(3) If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee if some items were or should have been in existence before the bulk assignee’s acquisition of the units. In conjunction with the acquisition of units, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected or appointed a majority of the members of the board of administration.

(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section prevails.

(5) Failure of a bulk assignee or bulk buyer to substantially comply with all the requirements in this part results in the loss of any and all protections or exemptions provided under this part.

## 718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—

(1) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the original developer prepared in accordance with s. 718.504, which must include the form of contract for sale and for lease in compliance with s. 718.503(2);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report did not exist before the acquisition of title by the bulk assignee or bulk buyer, and if accounting records that permit preparation of the required financial information report for that period cannot be obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD BEFORE THE SELLER’S ACQUISITION OF THE UNIT IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE GOOD FAITH EFFORTS OF THE SELLER .

(2) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file with the division and provide to a prospective purchaser or tenant under a lease for a term exceeding 5 years a disclosure statement that includes, but is not limited to:

(a) A description of any of the developer rights that have been assigned to the bulk assignee or bulk buyer;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE

DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE,

EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR

REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER; and

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

THE SELLER HAS NO OBLIGATION TO FUND CONVERTER

RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER

S. 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY

EXCEPT AS EXPRESSLY REQUIRED OF THE SELLER IN

THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE

SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO

ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR

WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) A bulk assignee, while in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(4) A bulk assignee or a bulk buyer must comply with s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be provided all of the rights and protections contained in s. 718.302 regarding agreements entered into by the association which are under the control of the developer, bulk assignee, or bulk buyer.

(5) Notwithstanding any other provision of this part, a bulk assignee or a bulk buyer is not required to comply with the filing or disclosure requirements of subsections (1) and (2) if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction.

## 718.707 Time limitation for classification as bulk assignee or bulk buyer.

A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

## 718.708 Liability of developers and others.—

An assignment of developer rights to a bulk assignee or bulk buyer does not release the original developer from liabilities under the declaration or this chapter. This part does not limit the liability of the original developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the original developer, unless specifically excluded in this part. This part does not waive, release, compromise, or limit liability established under this chapter except as specifically excluded under this part.

## 718.71 Financial reporting.—

An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

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# Part I General Provisions

## 719.101 Short title.——

This chapter shall be known and may be cited as the "Cooperative Act."

## 719.102 Purpose.——

The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property. It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.

## 719.103 Definitions.——

As used in this chapter:

(1) "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

(3) "Board of administration" means the board of directors or other representative body responsible for administration of the association.

(4) “Buyer” means a person who purchases a cooperative. The term “Purchaser” may be used interchangeably with the term “buyer.”

(5) "Bylaws" means the bylaws of the association existing from time to time.

(6) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board.

(7) "Common areas" means the portions of the cooperative property not included in the units.

(8) “Common areas” includes within its meaning the following:

(a) The cooperative property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common areas.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common areas.

(e) Any other part of the cooperative property designated in the cooperative documents as common areas.

(9) "Common expenses" means all expenses and assessments properly incurred by the association for the cooperative.

(10) "Common surplus" means the excess of all receipts of the association including, but not limited to, assessments, rents, profits, and revenues on account of the common areas over the amount of common expenses.

(11) “Conspicuous type” means type in capital letters no smaller than the largest type on the page on which it appears.

(12) "Cooperative" means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

(13) "Cooperative documents" means:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner's membership or share in the association.

(c) The document recognizing a unit owner's title or right of possession to his or her unit.

(14) "Cooperative parcel" means the shares or other evidence of ownership in a cooperative representing an undivided share in the assets of the association, together with the lease or other muniment of title or possession.

(15) "Cooperative property" means the lands, leaseholds, and personal property owned by a cooperative association.

(16) "Developer" means a person who creates a cooperative or who offers cooperative parcels for sale or lease in the ordinary course of business, but does not include the owner or lessee of a unit who has acquired or leased the unit for his or her own occupancy, nor does it include a condominium association which creates a cooperative by conversion of an existing residential condominium after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons.

(17) “Division” means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation.

(18) “Equity facilities club” means a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, which membership interests entitle the individuals to use certain physical facilities owned by the equity club. Such physical facilities do not include a residential unit or accommodation. For purposes of this definition, the term “accommodation” shall include, but is not limited to, any apartment, residential cooperative unit, residential condominium unit, cabin, lodge, hotel or motel room, or other accommodation designed for overnight occupancy for one or more individuals.

(19) “Limited common areas” means those common areas which are reserved for the use of a certain cooperative unit or units to the exclusion of other units, as specified in the cooperative documents.

(20) "Operation" or "operation of the cooperative" includes the administration and management of the cooperative property.

(21) “Rental agreement” means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(22) “Residential cooperative” means a cooperative consisting of cooperative units, any of which are intended for use as a private residence. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or homestead, or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or homestead, but not a residential cooperative with respect to those units intended for use commercially or industrially. With respect to a timeshare cooperative, the timeshare instrument as defined in s. 721.05 shall govern the intended use of each unit in the cooperative.

(23) “Special assessment” means any assessment levied against unit owners other than the assessment required by a budget adopted annually.

(24) “Timeshare estate” means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time.

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents.

(26) "Unit owner" or "owner of a unit" means the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

(27) “Voting certificate” means a document which designates one of the record title owners, or the corporate, partnership, or entity representative who is authorized to vote on behalf of a cooperative unit that is owned by more than one owner or by an entity.

(28) “Voting interests” means the voting rights distributed to the association members as provided for in the Articles of Incorporation.

## 719.1035 Creation of cooperatives.——

(1) The date when cooperative existence shall commence is upon commencement of corporate existence of the cooperative association as provided in s. 607.0203. The cooperative documents must be recorded in the county in which the cooperative is located before property may be conveyed or transferred to the cooperative. All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to cooperative ownership must either join in the execution of the cooperative documents or execute, with the requirements for deed, and record, a consent to the cooperative documents or an agreement subordinating their mortgage interest to the cooperative documents. Upon creation of a cooperative, the developer or association shall file the recording information with the division within 30 working days on a form prescribed by the division.

(2) All provisions of the cooperative documents are enforceable equitable servitudes, run with the land, and are effective until the cooperative is terminated.

## 719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.——

(1) RIGHT OF ACCESS TO UNITS. The association has the irrevocable right of access to each unit from time to time during reasonable hours when necessary for the maintenance, repair, or replacement of any structural components of the building or of any mechanical, electrical, or plumbing elements necessary to prevent damage to the building or to another unit.

(2) OFFICIAL RECORDS.

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the email addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The email and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the email or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. [**(See also: Rule 61B-76.001(1))**](#_61B-76.001__Definitions.)Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained 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 cooperative property or within the county in which the cooperative property is located within 10 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d).The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same.

An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of

the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative Proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, 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.

4. Medical records of unit owners.

5. Social security numbers, driver 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. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of the other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph 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.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the 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.

(d) The association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the cooperative or association other than the information or documents required by this chapter to be made available or disclosed. The association or its authorized agent shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for its time in providing good-faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee shall not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the association's response.

(e) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 719.501(1)(d) against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(3) INSURANCE. The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property. The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(a) Windstorm insurance coverage for a group of no fewer than three communities created and operating under chapter 718, this chapter, chapter 720, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. Such insurance coverage is deemed adequate windstorm insurance for the purposes of this section.

(b) An association or group of associations may self-insure against claims against the association, the association property, and the cooperative property required to be insured by an association, upon compliance with the applicable provisions of ss. 624.460-624.488, which shall be considered adequate insurance for purposes of this section.

(4) FINANCIAL REPORT. (See also: Rules 61B-76.006(1),(7)

(a) (See also: Rule 61B-76.006(5)) Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements. (b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement.

4. The requirement to have the financial statements compiled, reviewed, or audited does not apply to an association if a majority of the voting interests of the association present at a duly called meeting of the association have voted to waive this requirement. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of the operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year.

(c) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required by this section, the association shall duly notice and hold a membership meeting within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year.

Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

(5) ASSESSMENTS. The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common areas. However, the association may not charge a use fee against the unit owner for the use of common areas unless otherwise provided for in the cooperative documents or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of common areas.

(6) PURCHASE OF LEASES. The association has the power to purchase any land or recreation lease upon the approval of such voting interest as is required by the cooperative documents. If the cooperative documents make no provision for acquisition of the land or recreational lease, the vote required is that required to amend the cooperative documents to permit the acquisition.

(7) COMMINGLING. All funds shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled unless combined for investment purposes. This subsection is not meant to prohibit prudent investment of association funds even if combined with operating or other reserve funds of the same association, but such funds must be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds in the combined account. No manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of a cooperative association may commingle any association funds with his or her own funds or with the funds of any other cooperative association or community association as defined in s. 468.431.

(8) CORPORATE ENTITY.

(a) The officers and directors of the association have a fiduciary relationship to the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value is subject to a civil penalty pursuant to s. 719.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken is presumed to have assented to the action taken unless the director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(9) EASEMENTS--Unless prohibited by the cooperative documents, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement, if the easement constitutes part of or crosses the common areas of association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement.

(10) POWERS AND DUTIES. The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the articles of incorporation and bylaws and part I of chapter 607 and chapter 617, as applicable.

(11) NOTIFICATION OF DIVISION. When the board of directors intends to dissolve or merge the cooperative association, the board shall so notify the division before taking any action to dissolve or merge the cooperative association.

## 719.105 Cooperative parcels; appurtenances; possession and enjoyment.——

(1) Each cooperative parcel has, as appurtenances thereto:

(a) Evidence of membership, ownership of shares, or other interest in the association with the full voting rights appertaining thereto. Such evidence must include a legal description of each dwelling unit and must be recorded in the office of the clerk of the circuit court as required by s. 201.02(3).

(b) An undivided share in the assets of the association.

(c) The exclusive right to use that portion of the common areas as may be provided by the cooperative documents.

(d) An undivided share in the common surplus attributable to the unit.

(e) Any other appurtenances provided for in the cooperative documents.

(2) Each unit owner is entitled to the exclusive possession of his or her unit. The unit owner is entitled to use the common areas in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the rights of other unit owners.

(3) When a unit is leased, the tenant has all use rights in the association property available for use generally by the unit owner and the unit owner does not have such rights except as a guest. This subsection does not interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association may adopt rules to prohibit dual usage by a unit owner and a tenant of cooperative property.

## 719.1055 Amendment of cooperative documents; alteration and acquisition of property.;alteration and acquisition of property——

(1) Unless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Cooperative documents in cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental entity.

(2) Unless a lower number is provided in the cooperative documents or unless such action is expressly prohibited by the articles of incorporation or bylaws of the cooperative, the acquisition of real property by the association, and material alterations or substantial additions to such property by the association shall not be deemed to constitute a material alteration or modification of the appurtenances to the unit if such action is approved by two-thirds of the total voting interests of the cooperative.

(3) (a) Unless other procedures are provided in the cooperative documents or such action is expressly prohibited by the articles of incorporation or bylaws of the cooperative, the association may materially alter, convert, lease, or modify the common areas of the mobile home cooperative if the action is approved by two-thirds of the total voting interests of the cooperative.

(b) The association may change the configuration or size of a unit only if the action is approved by the affected unit owners and by two-thirds of the total voting interests of the cooperative.

(4) (a) If the cooperative documents fail to provide a method of amendment, the documents may be amended as to all matters except those described in subsection (1) if the amendment is approved by the owners of not less than two-thirds of the units.

(b) No provision of the cooperative documents shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the cooperative documents shall contain the full text of the provision to be amended, new words shall be inserted in the text and 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, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: “Substantial rewording of document. See provision \_\_\_\_\_ for present text.”

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association’s board as evidence of compliance of the cooperative units with the applicable fire and life safety code.

(a) 1. Notwithstanding chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a cooperative or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected cooperative. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, a cooperative 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 cooperative will become compliant by December 31, 2019.

2. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the cooperative is located. The cooperative shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the cooperative’s opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

(b) 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 least 10 percent of the voting interests. Such vote may only be called once every 3 years. Notice must be provided as required for any regularly called meeting of the unit owners, and the notice 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.

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.

(6) Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, a cooperative or unit owner is not obligated to retrofit the common elements or units of a residential cooperative that meets the definition of "housing for older persons" in subparagraph [760.29](http://www.flsenate.gov/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0760/Sec29.htm&StatuteYear=2003)(4)(b)3. To comply with requirements relating to handrails and guardrails in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected cooperative. However, a cooperative may not forego the retrofitting in common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means stairwells and exposed, outdoor walkways and corridors. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with handrails and guardrails before the end of 2014.

(a) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the cooperative is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association's vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(b) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.

(7) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association’s cooperative documents through legal means. Accordingly, and notwithstanding any provision of this subsection to the contrary:

(a) As to any mortgage recorded on or after July 1, 2013, any provision in the association’s cooperative documents that requires the consent or joinder of some or all mortgagees of units or any other portion of the association’s common areas to amend the association’s cooperative documents or for any other matter is enforceable only as to amendments to the association’s cooperative documents that adversely affect the priority of the mortgagee’s lien or the mortgagee’s rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before July 1, 2013, any existing provisions in the association’s cooperative documents requiring mortgagee consent are enforceable.

(c) In securing consent or joinder, the association is entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded.

Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information that the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record.

The association is deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after July 1, 2013, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county in which the declaration is recorded.

(f) Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in paragraph (a) and 5 years after the date of recordation of the certificate of amendment for all other amendments. This paragraph applies to all mortgages, regardless of the date of recordation of the mortgage.

## 719.106 Bylaws; cooperative ownership.——

(See Also: Rules 61B-50 and 61B-75, Florida Administrative Code)

(1) MANDATORY PROVISIONS. The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) Administration.

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, unless the cooperative except in the case of cooperatives has having five or fewer units., in which case in not-for-profit corporations, The board shall consist of not fewer than three members in cooperatives with five or fewer units that are not-for-profit corporations. In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co- owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations.

Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. 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 to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association’s funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director’s term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.3. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board’s response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners’ inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(b) Quorum; voting requirements; proxies.

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a time-share cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker shall be utilized so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.

(c) Board of administration meetings.

Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purpose for such assessments. However, ritten notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting.

Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association.

However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records. Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Meetings of a committee to take final action on behalf of the board or to make

Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph.

Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association.

Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association’s attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(d) [(See Also: 61B-75.005, F.A.C.)](#_61B-75.005__Regular)  Shareholder meetings.

There shall be an annual meeting of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership must comply with subparagraph 1. The bylaws must provide the method for calling meetings, including annual meetings. Written notice, which must incorporate an identification of agenda items, shall be given to each unit owner at least 14 days before the annual meeting and posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board must by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings are posted. In lieu of or in addition to the physical posting of the meeting notice, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a posted, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

In addition to any of the authorized means of providing notice of a meeting of the shareholders, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting must be sent by mail, hand delivered, or electronically transmitted to each unit owner. An officer of the association must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed, hand delivered, or electronically transmitted, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. (See also: [Rule 61B-75.005(5),](#_61B-75.005__Regular) (9), (13), 61B-75.007(3)(e)1., (5)(a)2., 3., 61B-75.008(3)(a)2., 3., F.A.C.) The board of administration shall be elected by written ballot or voting machine. A proxy may not be used in electing the board of administration, in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter.

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

Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election must occur on the date of the annual meeting. This subparagraph does not apply to time-share cooperatives. Notwithstanding this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board. Any challenge to the election process must be commenced within 60 days after the election results are announced.

b. Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the association’s bylaws, articles of incorporation, proprietary lease, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members.

Within 90 days after being elected or appointed to the board, in lieu of this written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider as approved by the division pursuant to the requirements established in chapter 718 within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this subsubparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall cause the association to retain a director’s written certification or educational certificate for inspection by the members for 5 years after a director’s election or the duration of the director’s uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

2. Any approval by unit owners called for by this chapter, or the applicable cooperative documents, must be made at a duly noticed meeting of unit owners and is subject to this chapter or the applicable cooperative documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable cooperative documents or law which provides for the unit owner action.

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or law. Notice of meetings of the board of administration, shareholder meetings, except shareholder meetings called to recall board members under s. 719.106(1)(f), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that may block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

4. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

6. Unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 1. unless the association has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) Budget procedures.

1. The board of administration shall mail, hand deliver or electronically transmit to each unit owner at the address last furnished to the association, a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 14 days prior to the meeting at which the budget will be considered. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or the manager or other person providing notice of the meeting and filed among the official records of the association. The meeting must be open to the unit owners.

2. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year which exceeds 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget requires a vote of not less than a majority of all the voting interests.

3. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all voting interests in writing, the budget is adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors goes into effect as scheduled.

4. In determining whether assessments exceed 115 percent of similar assessments for prior years, any authorized provisions for reasonable reserves for repair or replacement of cooperative property, anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis or assessments for betterments to the cooperative property must be excluded from computation. However, as long as the developer is in control of the board of administration, the board may not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests.

(f) Recall of board members.

[(See also: Rule 61B-75.007(3)(e)2., F.A.C.)](#_61B-75.007__Recall)  Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing.

At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 719.1255. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration.

If the arbitrator certifies the recall as to any member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member’s possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 719.1255 challenging the board’s failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-fullbusiness- day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 719.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(g) Common expenses.

The manner of collecting from the unit owners their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less frequently than quarterly, in an amount no less than is required to provide funds in advance for payment of all of the anticipated current operating expense and for all of the unpaid operating expense previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses in actions taken pursuant to s. 719.104(4).

(h) Amendment of bylaws.

The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than 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 in 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, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw \_\_\_\_\_ for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

(i) Transfer fees.

No charge may be made by the association or anybody 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 cooperative documents. Any such fee may be preset, but in no event shall it exceed $100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. Nothing in this paragraph shall be construed to prohibit an association from requiring as a condition to permitting the letting or renting of a unit, when the association has such authority in the documents, the depositing into an escrow account maintained by the association a security deposit in an amount not to exceed the equivalent of 1 month's rent. The security deposit shall protect against damages to the common areas or cooperative property. Within 15 days after a tenant vacates the premises, the association shall refund the full security deposit or give written notice to the tenant of any claim made against the security. Disputes under this paragraph shall be handled in the same fashion as disputes concerning security deposits under s. 83.49.

(j) Annual budget. [**(See also: Rule 61B-76.005)**](#_61B-75.005__Regular)

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20).

2. [**(See also: Rule 61B-76.001(5)**](#_61B-76.001__Definitions.) In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance.

These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item.

The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection.

However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association.

Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

(k) Insurance or fidelity bonds.

The association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time.

As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks, and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding and insurance.

(l) Arbitration.

There shall be a provision for mandatory nonbinding arbitration of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(m) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

(2) OPTIONAL PROVISIONS. The bylaws may provide for the following:

(a) Administrative rules.

A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas.

(b) Use and maintenance restrictions.

Restrictions on, and requirements for, the use, maintenance, and appearance of the units and the use of the common areas, not inconsistent with the cooperative documents, designed to prevent unreasonable interference with the use of the units and common areas.

(c) Notice of meetings.—Provisions for giving notice by electronic transmissions in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.

(d) Other matters.

Other provisions not inconsistent with this chapter or with the cooperative documents as may be desired.

## 719.1064 Failure to fill vacancies on board of administration; appointment of receiver upon petition of unit owner.——

If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may apply to the circuit court within whose jurisdiction the cooperative lies for the appointment of a receiver to manage the affairs of the association. At least 30 days prior to applying to the circuit court, the unit owner shall mail to the association and post in a conspicuous place on the cooperative property a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the unit owner may proceed with the petition. If a receiver is appointed, the association shall be responsible for the salary of the receiver, court costs, and attorney fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum.

## 719.1065 Power of attorney; compliance with chapter.——

The use of a power of attorney that affects any aspect of the operation of a cooperative shall be subject to and in compliance with the provisions of this chapter and all cooperative documents, association rules and other rules adopted pursuant to this chapter and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

## 719.107 Common expenses; assessment.——

(1) (a) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the cooperative property; costs of carrying out the powers and duties of the association; and any other expense, whether or not included in this paragraph, designated as common expense by this chapter or the cooperative documents.

(b) If so provided in the bylaws, the cost of communications services as defined in chapter 202, information services or Internet services obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the communications services as defined in chapter 202, information services or Internet services master television antenna system or the cable television service.. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service , communications services as defined in chapter 202, information services or Internet servicesmay be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

(c) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the cooperative in which the unit is located.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the cooperative documents, except to the extent that the cooperative documents provide to the contrary. This paragraph does not apply to any unit that is not committed to a timeshare plan.

(e) Common expenses include the costs of insurance acquired by the association under the authority of s. 719.104(3), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

(2) Funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages of sharing common expenses provided in the cooperative documents.

## 719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.——

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor.

(2) The liability for rents and assessments may not be avoided by waiver of the use or enjoyment of any common areas or by abandonment of the unit for which the rents and assessments are made.

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien.

The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail and the notice must be in substantially the following form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

##### NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit …(unit number)… of …(name of cooperative)… The following amounts are currently due on your account to …(name of association)…, and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association’s notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due …(dates)… $.......

Late fee, if applicable $.......

Interest through …(dates)…\* $.......

Certified mail charges $.......

Other costs $.......

TOTAL OUTSTANDING $.......

\*Interest accrues at the rate of ...... percent per annum.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during hich the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process.

Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner’s agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

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##### NOTICE OF CONTEST OF LIEN

TO: …(Name and address of association)…:

You are notified that the undersigned contests the claim of lien filed by you on ......,…(year)…, and recorded in Official Records Book ...... at Page ......, of the public records of ...... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this ...... day of ......, …(year)…

.Signed: …(Owner or Attorney)…

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After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

------------------------------------------------------

##### RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $......, hereby waives and releases its lien and right to claim a lien for unpaid assessments through ......,…(year)…, recorded in the Official Records Book ...... at Page ......, of the public records of ...... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. ...... OF …(NAME OF COOPERATIVE)…, A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ......, PAGE ......, OF THE PUBLIC RECORDS OF ...... COUNTY, FLORIDA.

…(Signature of Authorized Agent)… …(Signature of Witness)…

…(Print Name)… …(Print Name)…

…(Signature of Witness)…

…(Print Name)…

Sworn to (or affirmed) and subscribed before me this ...... day of ......, …(year)

…, by …(name of person making statement)….

…(Signature of Notary Public)…

…(Print, type, or stamp commissioned name of Notary Public)…

Personally Known...... OR Produced...... as identification.

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(5) Liens for rents and assessments may be foreclosed by suit brought in the name of the association, in like manner as a foreclosure of a mortgage on real property. In any foreclosure, the unit owner shall pay a reasonable rental for the cooperative parcel, if so provided in the cooperative documents, and the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rent. The association has the power, unless prohibited by the cooperative documents, to bid on the cooperative parcel at the foreclosure sale and to acquire and hold, lease, mortgage, or convey it. Suit to recover a money judgment for unpaid rents and assessments may be maintained without waiving the lien securing them.

(6) Within 10 business days after receiving a written or electronic request for an estoppel certificate from a unit owner or the unit owner’s designee, or a unit mortgagee or the unit mortgagee’s designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:

2. Name(s) of the unit owner(s) as reflected in the books and records of the association:

3. Unit designation and address:

4. Parking or garage space number, as reflected in the books and records of the association:

5. Attorney’s name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

6. Fee for the preparation and delivery of the estoppel certificate:

7. Name of the requestor:

8. Assessment information and other information:

**ASSESSMENT INFORMATION:**

a. The regular periodic assessment levied against the unit is $  per   (insert frequency of payment)  .

b. The regular periodic assessment is paid through   (insert date paid through)  .

c. The next installment of the regular periodic assessment is due   (insert due date)   in the amount of $\_\_\_\_.

d. An itemized list of all assessments, special assessments, and other moneys owed by the unit owner on the date of issuance to the association for a specific unit is provided.

e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

**OTHER INFORMATION:**

f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due?   (Yes)    (No)  . If yes, specify the type and amount of the fee.

g. Is there any open violation of rule or regulation noticed to the unit owner in the association official records?   (Yes)    (No)  .

h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit?   (Yes)    (No)  . If yes, has the board approved the transfer of the unit?   (Yes)    (No)  .

i. Is there a right of first refusal provided to the members or the association?   (Yes)    (No)  . If yes, have the members or the association exercised that right of first refusal?   (Yes)    (No)  .

j. Provide a list of, and contact information for, all other associations of which the unit is a member.

k. Provide contact information for all insurance maintained by the association.

l. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person’s successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner’s designee, or a unit mortgagee or the unit mortgagee’s designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. [51.011](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0051/Sections/0051.011.html) may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees contained in s. [719.106](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0719/Sections/0719.106.html)(1)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250 if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed $150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, $750.

2. For 26 to 50 units, $1,000.

3. For 51 to 100 units, $1,500.

4. For more than 100 units, $2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

(7) The remedies provided in this section do not exclude other remedies provided by the cooperative documents and permitted by law.

(8) (a) No unit owner may be excused from the payment of his or her share of the rents or assessments of a cooperative unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (6) and in the following cases:

1. If the cooperative documents so provide, a developer or other person owning cooperative units offered for sale may be excused from the payment of the share of the common expenses, assessments, and rents related to those units for a stated period of time. The period must terminate no later than the first day of the fourth calendar month following the month in which the right of exclusive possession is first granted to a unit owner. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. **(See also:** [**Rule 61B-76.004;**](#_61B-76.004_Guarantees_of)[**61B-76.0062(2)(d)**](#_61B-76.0062_Transition_Financial) A developer, or other person with an ownership interest in cooperative units or having an obligation to pay common expenses, may be excused from the payment of his or her share of the common expenses which would have been assessed against those units during the period of time that he or she shall have guaranteed to each purchaser in the purchase contract or in the cooperative documents, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the cooperative imposed upon the unit owners would not increase over a stated dollar amount and shall have obligated himself or herself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

(b) If the purchase contract, cooperative documents, or agreement between the developer and a majority of unit owners other than the developer provides for the developer or another person to be excused from the payment of assessments pursuant to paragraph (a), no funds receivable from unit owners payable to the association or collected by the developer on behalf of the association, other than regular periodic assessments for common expenses as provided in the cooperative documents and disclosed in the estimated operating budget pursuant to s. 719.503(1)(b)6. or s. 719.504(20)(b), may be used for payment of common expenses prior to the expiration of the period during which the developer or other person is so excused. This restriction applies to funds including, but not limited to, capital contributions or startup funds collected from unit purchasers at closing.

(9) [**(See also: Rule 61B-76.006(3)(c))**](#_61B-76.006_Financial_Reporting)The specific purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 719.104(3), approved in accordance with the cooperative documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice or returned to the unit owners. However, upon completion of such specific purposes, any excess funds shall be considered common surplus and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(10) (a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 719.108(10), Florida Statutes, we demand that you make your rent payments directly to the cooperative association and continue doing so until the association notifies you otherwise.

Payment due the cooperative association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to … (full address) …, payable to … (name)….

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 719.108(10), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

2. The association must mail written notice to the unit owner of the association’s demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the unit owner related to the rent timely paid to the association after the association has made written demand..

(a) If the tenant paid rent to landlord or the unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(b) The liability of the tenant may not exceed the amount due from the tenant to the tenants’ landlord. The tenant’s landlord shall provide the tenant a credit against rents due to the landlord in the amount of monies paid to the association.

(c) The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

(d) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(e) A court may supersede the effect of this subsection by appointing a receiver.

## 719.109 Right of owners to peaceably assemble.——

(1) All common areas and recreational facilities serving any cooperative shall be available to unit owners in the cooperative or cooperatives served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any cooperative document or rule which operates to deprive the owner of such rights.

## 719.110 Limitation on actions by association.——

The statute of limitations for any actions in law or equity which a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

## 719.111 Attorney fees.——

If a contract or lease between a cooperative unit owner or association and a developer contains a provision allowing attorney fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

## 719.112 Unconscionability of certain leases; rebuttable presumption.——

(1) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of cooperatives were entered into by parties wholly representative of the interests of a cooperative developer at a time when the cooperative unit owners not only did not control the administration of their cooperative but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a cooperative association and cooperative unit owners with relatively few obligations on the part of the lessor.

Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (2). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any cooperative lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(2) A lease pertaining to use by cooperative unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by cooperative unit owners, other than the developer, to represent their interests.

(b) The lease requires either the cooperative association or the cooperative unit owners to pay real estate taxes on the subject real property.

(c) The lease requires either the cooperative association or the cooperative unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard.

(d) The lease requires either the cooperative association or the cooperative unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property.

(e) The lease requires either the cooperative association or the cooperative unit owners to pay rent to the lessor for a period of 21 years or more.

(f) The lease provides that failure of the lessee to make payment of rent due under the lease either creates, establishes, or permits establishment of a lien upon individual cooperative units of the cooperative or upon stock or other ownership interest to secure claims for rent.

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved. For purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the cooperative.

(h) The lease provides for a periodic rental increase.

(i) The lease or other cooperative documents require that every transferee of a cooperative unit must assume obligations under the lease.

(3) Any provision of the Florida Statutes to the contrary notwithstanding, neither the statute of limitations nor laches shall prohibit unit owners from maintaining a cause of action under the provisions of this section.

## 719.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.—

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the cooperative lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

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##### NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned owner of a unit in ...(name of cooperative)... intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney fees payable from association funds. ...(name and address of petitioning unit owner)...

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(2) The notice required by subsection (1) must be provided by the unit owner to the association by certified mail or personal delivery, must be posted in a conspicuous place on the cooperative property, and must be provided to every unit owner of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

(3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the unit owner may proceed with the petition.

(4) If a receiver is appointed, all unit owners shall be given written notice of such appointment as provided in s. 719.127.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

## 719.114 Separate taxation of cooperative parcels; survival of contractual provisions after tax sale.——

(1) Ad valorem taxes and special assessments by taxing authorities shall be assessed against the cooperative parcels and not upon the cooperative property as a whole. No ad valorem tax or special assessment may be separately assessed against common areas if the common areas are owned by the cooperative association or are jointly owned by the owners of the cooperative parcels. Each cooperative parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The property appraiser must be provided the necessary documents, as evidenced in the official records of the clerk of the circuit court of the county, to make a determination as to the ownership of a cooperative parcel for assessment and homestead tax exemption purposes. The taxes and special assessments levied against each cooperative parcel shall constitute a lien only upon the cooperative parcel assessed and upon no other portion of the cooperative property.

(2) All contractual provisions relating to a cooperative parcel which has been sold for taxes or special assessments survive and are enforceable after issuance of a tax deed or

master's deed, upon foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Cooperative property divided into timeshare estates shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

## 719.115 Limitation of liability. ——

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the cooperative documents, and the bylaws.

(2) The owner of a unit may be personally liable for acts or omissions of the association in relation to the use of the common areas, but only to the extent of his or her prorata share of the liability in the same percentage of his or her designated portion of the common expenses and then in no case shall the liability exceed the value of his or her unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners and they shall have the right to intervene and defend.

## 719.1255 Alternative resolution of disputes.——

[(See Also: Rule 61B-45, Florida Administrative Code)](#FAC_MandatoryNonBind)

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall provide for alternative dispute resolution in accordance with s. 718.1255.

## 719.127 Receivership notification.—

Upon the appointment of a receiver by a court for any reason relating to a cooperative association, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

## 719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association’s principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

## 719.129 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.

(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.

(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.

(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.

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

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare cooperative association.

## 719.131 Law Enforcement Vehicles--

An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or who is a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or the tenant, guest, or invitee of the unit owner, otherwise has a right to park.

### Part II Rights and Obligations of Developers

## 719.202 Sales or reservation deposits prior to closing.——

(1) If a developer contracts to sell a cooperative parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to cooperative ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director shall have the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from the escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments in excess of the 10 percent of the sale price described in subsection (1) received prior to completion of construction by the developer from the buyer on a contract for purchase of a cooperative parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the cooperative so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. The developer may use the funds in the actual construction and development of the cooperative property in which the unit to be sold is located.

However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) "Completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) Failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the cooperative property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection. The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. The developer shall maintain separate records for each cooperative parcel or proposed cooperative parcel for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the fund shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an escrow account or deposit of funds into escrow or withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The failure to establish an escrow account or to place funds therein shall be prima facie evidence of an intentional and purposeful violation of this section.

(8) Each escrow account required by this section shall be established with a bank, a savings and loan association, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or any financial lending institution having a net worth in excess of $5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Each escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee thereof may serve as escrow agent. Escrow funds may be invested only in securities of the United States or any agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

(9) Any developer who is subject to the provisions of this section shall not be subject to the provisions of s. 501.1375.

## 719.203 Warranties.——

(1) The developer shall be deemed to have granted to the purchaser of each parcel an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event continuing for more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.(2) The contractor and all subcontractors and suppliers grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is the obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a cooperative as to which rights are established by contracts for sale of 10 percent or more of the units in the cooperative by the developer to prospective unit owners prior to July 1, 1974, or as to cooperative buildings on which construction has been commenced prior to July 1, 1974.

### Part III Rights and Obligations of Associations

## 719.301 Transfer of association control.——

(1) When unit owners other than the developer own 15 percent or more of the units in a cooperative that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or

(e) Seven years after creation of the cooperative association, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent in cooperatives with fewer than 500 units and 2 percent in cooperatives with 500 or more units in a cooperative operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority of the members of the board.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of, an election for the members of the board of administration. The election shall proceed as provided in s. 719.106(1)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(a) 1. The original or a photocopy of the recorded cooperative documents and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual recorded cooperative documents.

2. A certified copy of the association's articles of incorporation, or if it is not incorporated, then copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations which have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents since the incorporation of the association through the date of turnover. The records shall be audited for the period of the incorporation of the association or for the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by the Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, represented by the developer to be part of the common areas or ostensibly part of the common areas, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the cooperative and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, the developer's agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the cooperative property and for the construction and installation of the mechanical components serving the improvements. If the cooperative property has been organized as a cooperative more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(g) A list of the names and addresses, of which the developer had knowledge at any time in the development of the cooperative, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping.

(h) Insurance policies.

(i) Copies of any certificates of occupancy which may have been issued for the cooperative property.

(j) Any other permits issued by governmental bodies applicable to the cooperative property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m)Leases of the common areas and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(5) If, during the period prior to the time the developer relinquishes control of the association pursuant to subsection (4), any provision of the Cooperative Act or any rule adopted thereunder is violated by the association, the developer shall be responsible for such violation and shall be subject to the administrative action provided in this chapter for such violation, and the developer shall be liable to third parties for such violation. This subsection is intended to clarify existing law.

(6) The division may adopt rules administering the provisions of this section.

## 719.302 Agreements entered into by the association.——

(1) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall be fair and reasonable and may be canceled by unit owners other than the developer:

(a) If the association operates only one cooperative and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the cooperative, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the voting interests in the cooperative other than the voting interests owned by the developer.

(b) If the association operates more than one cooperative and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the voting interests in a cooperative operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that cooperative or of improvements used only by unit owners of that cooperative may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the cooperative other than the voting interests owned by the developer. No grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one cooperative, and operated by more than one association, may be canceled except pursuant to paragraph (d).

(c) If the association operates more than one cooperative and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all cooperatives operated by the association other than the voting interests owned by the developer.

(d) If the owners of units in a cooperative have the right to use property in common with owners of units in other cooperatives and those cooperatives are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one cooperative may be canceled until unit owners other than the developer have assumed control of all of the associations operating the cooperatives that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those cooperatives other than voting interests owned by the developer.

(2) Any grant or reservation made by a cooperative document, lease, or other document, or any contract made by the developer or association prior to the time unit owners other than the developer elect a majority of the board of administration, which requires the association to purchase cooperative property or to lease cooperative property to another party shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the cooperative property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

(3) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall not be in conflict with the powers and duties of the association or the rights of unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(6) Any action to compel compliance with the provisions of this section or of s. 719.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 719.301, the prevailing party shall be entitled to recover reasonable attorney fees.

## 719.3026 Contracts for products and services; in writing; bids; exceptions.—

Associations with less than 100 units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association in an amount which in the aggregate exceeds 5 percent of the association's budget, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2) (a) 1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services shall not be subject to the provisions of this section.

2. A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to a cooperative pursuant to a local government franchise agreement by a franchise holder are not subject to the competitive bid requirement. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. A condominium whose declaration or bylaws provides for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) This section does not limit the ability of an association to obtain needed products and services in an emergency.

(c) This section does not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

## 719.303 Obligations of owners.——

(1) Each unit owner, each tenant and other invitee, and each association shall be governed by, and shall comply with the provisions of, this chapter, the cooperative documents, the documents creating the association, and the association bylaws, and the provisions thereof shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit. The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 719.503(1)(a) is entitled to recover reasonable attorney fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection shall not be deemed to be actions for specific performance.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instrument given in writing by the unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) The association may levy reasonable fines for failure of the unit owner or the unit’s occupant, licensee, or invitee to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a 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 cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days’ written notice and an opportunity for a hearing to the unit owner and, if applicable, any its occupant, licensee, or invitee of the unit owner sought to be fined or suspended and an opportunity for a hearing. The hearing must be held before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee other unit owners who are neither board members nor persons residing in a board member’s household. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve agree with the proposed fine or suspension by majority vote, the fine or suspension it may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

(4) If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, the association may suspend the right of the unit owner or the unit’s occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the cooperative documents, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit’s occupant, licensee, or invitee by mail or hand delivery.

## 719.304 Association's right to amend cooperative documents.—

(1) If there is an omission or error in any cooperative document, or in other documents required by law to establish the cooperative, the association may correct the error or omission by an amendment to the cooperative document, or the other documents required to create a cooperative, in the manner provided in the document to amend the document, or, if none is provided, then by vote of a majority of the voting interests. The amendment is effective when passed and approved. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the cooperative documents, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(2) If there is an omission or error in a cooperative document, or other documents required to establish the cooperative, which would affect the valid existence of the cooperative and which may not be corrected by the amendment procedures in the cooperative documents or this chapter, then the circuit courts have jurisdiction to entertain petitions of one or more of the unit owners therein, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners and the association and mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final decree of the court by certified mail, return receipt requested, at their last known residence address. If an action to determine whether the cooperative documents or other documents comply with the mandatory requirements for the formation of a cooperative contained in this chapter is not brought within 3 years of the filing of the cooperative documents, the cooperative documents and other documents shall be effective under this chapter to create a cooperative, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this 3-year period, circuit courts have jurisdiction to entertain petitions permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

# Part IV Special Types of Cooperatives

## 719.401 Leaseholds.——

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the cooperative constitutes a timeshare cooperative created pursuant to chapter 721, the lease must have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the cooperative to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the cooperatives to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. This paragraph does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or any political subdivision thereof.

(d) 1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection, and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney fees and costs which the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph shall affect litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f) 1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph shall not apply to a nonresidential cooperative and shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

This paragraph does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or political subdivision thereof.

(2) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by the association or the unit owners, the division director shall have the discretion to accept alternative assurances sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or, cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be at an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following apply:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply, but need not be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

## 719.4015 Cooperative leases; escalation clauses.——

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to cooperatives for which the cooperative documents were recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to cooperatives for which the cooperative documents were recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 719.401(8); and it prohibits any further escalation of rental fees after October 1, 1988, pursuant to escalation clauses in leases related to cooperatives for which the cooperative documents were recorded prior to June 4, 1975.

(3) The provisions of this section do not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof.

## 719.402 Conversion of existing improvements to cooperative.—

A developer may create a cooperative by converting existing, previously occupied improvements to such ownership by complying with parts I and VI of this chapter.

## 719.403 Phase cooperatives.——

(1) A developer may develop a cooperative in phases, if the original cooperative documents or an amendment to the cooperative documents approved by the unit owners and unit mortgagees provides for and describes in detail all anticipated phases, the impact, if any, which the completion of subsequent phases would have upon the initial phase, and the time period within which all phases must be added to the cooperative and must comply with the requirements of this section or the right to add additional phases shall expire.

(2) The original cooperative documents shall describe:

(a) The land which may become part of the cooperative and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached

as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the cooperative. The plot plan may be modified by the developer as to unit or building types to the extent that such changes are described in the cooperative documents. If provided in the cooperative documents, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum number and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum number of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage ownership in the common areas as each phase is added. In lieu of specific percentages, a formula for reallocating each unit's proportion or percentage of ownership in the common areas and manner of sharing common expenses and owning common surplus as additional units are added to the cooperative by the addition of any land may be described. The basis for allocating percentage ownership of units in phases added shall be consistent with the basis for allocation made among the units originally in the cooperative.

(d) The recreation areas and facilities to be owned as common areas by all unit owners and all personal property to be provided as each phase is added to the cooperative, and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the cooperative. The developer may reserve the right to add additional common area recreational facilities if the original cooperative documents contain a description of each type of facility and its proposed location. The cooperative documents shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the cooperative.

(f) Whether or not time-share estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of the owner's unit or at his or her last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common areas within the phases actually developed and added as a part of the cooperative.

(5) If the cooperative documents require the developer to convey any additional lands or facilities to the cooperative after the completion of the first phase and he or she fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding any other provisions of this chapter, any amendments by the developer adding any land to the cooperative shall be consistent with the provisions of the cooperative documents granting such right and shall contain or provide for the following matters:

(a) The legal description of the land being added to the cooperative.

(b) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the cooperative, to ensure that no unit in the cooperative, including the additional land, will bear the same designation as any other unit.

(c) A survey of the additional land and graphic description of the improvements in which any units are located and a plot plan thereof, and a certificate of surveyor, in conformance with 1 s. 719.1035(4)(e).

(d) The undivided share in the common areas appurtenant to each unit in the cooperative stated as percentages or fractions which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original cooperative documents.

(e) The proportions or percentages and the manner of sharing common expenses and owning common surplus which for residential units must be the same as the undivided share in the common areas. Amendments adding phases to a cooperative shall not require the execution of such amendments or consents thereto by unit owners other than the developer, unless the amendment permits the creation of time-share estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) Upon recording the cooperative documents or amendments adding phases pursuant to this section, the developer or association shall file the recording information with the division within 30 working days on a form prescribed by the division.

# Part V Regulation and Disclosure Prior to Sale of Residential Cooperatives

## 719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.——

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division.

The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty.

A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules.

It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the cooperative residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(f) **(See also:** [**61B-50**](#_The_Rules_of_2)**;** [**61B-75**](#_61B-75.002_Electronic_Transmission)**;** [**61B-76)**](#_61B-76.001__Definitions.)  The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the cooperative documents governing such cooperative community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules adopted on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of cooperatives which were rendered by the division during the previous year.

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

(k) The division shall provide training and programs for cooperative association board members and unit owners. The training may, in the division’s discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

1. The division shall maintain a toll-free telephone number accessible to cooperative unit owners.

(m)When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred.

If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of cooperative disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of voluntary mediators only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(2) (a) Each cooperative association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of $4 for each residential unit in cooperatives operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have the standing to maintain or defend any action in the courts of this state until the amount due is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

## 719.502 Filing prior to sale or lease.——

(1) (a A developer of a residential cooperative shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 719.503 and 719.504, if applicable. Until the developer has so filed, a contract for sale or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit. A developer shall not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules promulgated by the division and until the division notifies the developer that the filing is proper. A developer shall not close on any contract for sale or contract for a lease period of more than 5 years, as further provided in s. 719.503(1) (b), until the developer prepares and delivers all documents required by s. 719.503(1)(b) to the prospective buyer.

(b) The division may by rule develop filing, review, and examination requirements and the relevant timetables necessary to ensure compliance with the notice and disclosure requirements of this section.

(2) (a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed, a developer shall not offer a contract for purchase or lease of a unit for more than 5 years. However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of $250. Reservations shall not be taken on a proposed cooperative unless the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a downpayment on the purchase price at the time a contract is signed by the purchaser, if provided for in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file cooperative documents with the division prior to entering into a binding purchase or lease agreement for more than 5 years.

2. A statement of the right of the prospective purchaser to receive all cooperative documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase and sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of $20 for each residential unit to be sold by the developer which is described in the documents filed. If the cooperative is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to $100 per filing, with the exact fee to be set by the division rule.

(4) Any developer who complies with this section shall not be required to file with any other division or agency of this state for approval to sell the units in the cooperative, the information for the cooperative for which he or she filed.

## 719.503 Disclosure prior to sale.——

(1) DEVELOPER DISCLOSURE.

(a) Contents of contracts.

Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1. The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. The following caveat in conspicuous type shall be placed upon the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. The contract shall state the name and address of the escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his or her deposit from the escrow agent, upon request.

8. If the contract is for the sale or transfer of a unit in a cooperative in which timeshare estates have been or may be created, the following text in conspicuous type: UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a timeshare estate must also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(b) Copies of documents to be furnished to prospective buyer or lessee.

Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer shall not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate signed agreement as proof of the buyer’s agreement to close prior to the expiration of said voidability period.

Said proof shall be retained for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by 1s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

(c) Subsequent estimates; when provided.—If the closing on a contract occurs more than 12 months after the filing of the offering circular with the division, the developer shall provide a copy of the current estimated operating budget of the association to the buyer at closing, which shall not be considered an amendment that modifies the offering provided any changes to the association’s budget from the budget given to the buyer at the time of contract signing were the result of matters beyond the developer’s control. Changes in budgets of any master association, recreation association, or club and similar budgets for entities other than the association shall likewise not be considered amendments that modify the offering. It is the intent of this paragraph to clarify existing law.

(2) NONDEVELOPER DISCLOSURE.

(a) Each unit owner who is not a developer as defined by this chapter must comply with the provisions of this subsection prior to the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of the articles of incorporation of the association, the bylaws, and rules of the association, as well as a copy of the question and answer sheet as provided in s. 719.504.

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of an interest in a cooperative shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND THE QUESTION AND ANSWER SHEET MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, AND QUESTION AND ANSWER SHEET, IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE ARTICLES OF INCORPORATION, BYLAWS, RULES, AND QUESTION AND ANSWER SHEET, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.

(a) If cooperative parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common areas, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common areas appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the cooperative, the sales brochure for sales of timeshare estates in such units must contain the following statement in conspicuous type: UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES.

## 719.504 Prospectus or offering circular.——

Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers.

The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the cooperative.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the cooperative, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the cooperative property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the cooperative is not a phase cooperative; or, if the cooperative is a phase cooperative, the maximum number of buildings that may be contained within the cooperative, the minimum and maximum number of units in each building, the minimum and maximum number of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the cooperative.

2. The page in the cooperative documents where a copy of the survey and plot plan of the cooperative is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, a statement that the estimated date of completion of the cooperative is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the cooperative. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5) (a) A statement in conspicuous type describing whether the cooperative is created and being sold as fee simple interests or as leasehold interests. If the cooperative is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the cooperative, a statement in conspicuous type stating that timeshare estates are created and being sold in such specified units in the cooperative.

(6) A description of the recreational and other common areas that will be used only by unit owners of the cooperative, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f) 1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above, their general locations and types, improvements or changes that may be made, the approximate dollar amount to be expended, and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other cooperatives, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other common areas offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS COOPERATIVE. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMON AREAS. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the cooperative whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

(11) The arrangements for management of the association and maintenance and operation of the cooperative property and of other property that will serve the unit owners of the cooperative property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the cooperative documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the cooperative property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE CONTRACT MANAGER). Immediately following this statement, the location in the disclosure materials of the contract for management of the cooperative property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that cooperative to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD. Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED. Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the cooperative is part of a phase project, the following shall be stated:

(a) A statement in conspicuous type in substantially the following form shall be included: THIS IS A PHASE COOPERATIVE. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS COOPERATIVE. Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration providing for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the cooperative may be substantially different from the residential buildings and units originally in the cooperative, and, if the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE COOPERATIVE MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE COOPERATIVE. Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum number of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the cooperative.

(15) If the cooperative is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 719.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the cooperative property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the cooperative documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the cooperative. If any part of such land will serve the cooperative, the statement shall describe the land and the nature and term of service, and the cooperative documents or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common areas have been determined.

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the cooperative and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners, or which are not provided for or contemplated by the cooperative documents, including, but not limited to, the costs of private telephone; maintenance of the interior of cooperative units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the cooperative; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the cooperative and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and cooperative:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used areas.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves.

l. Fee payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used areas, which use and payment are a mandatory condition of ownership and are not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type: THE BUDGET CONTAINEDIN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association’s estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 719.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the cooperative and a statement of its and his or her experience in this field.

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The cooperative documents, or the proposed cooperative documents if the documents have not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the cooperative.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the cooperative and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to cooperative ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the cooperative is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment, or may be amended to comply with this chapter.

(25) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the cooperative property other than those in the declaration.

(26) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facility intended to serve the cooperative, a copy of such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502 or a statement that such acceptance has not been acquired or received.

(27) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

## 719.505 Good faith effort to comply.——

If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

## 719.506 Publication of false and misleading information.——

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the lease of a cooperative parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the lessee shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a)-(d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 719.503, the prevailing party shall be entitled to recover reasonable attorney fees.

## 719.507 Zoning and building laws, ordinances, and regulations.——

All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

## 719.508 Regulation by Division of Hotels and Restaurants.——

In addition to the authority, regulation, or control exercised by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to this act with respect to cooperatives, buildings included in a cooperative property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided in chapters 399 and 509.

# Part VI Conversions to Cooperative

## 719.604 Short title.——

This part shall be known and may be cited as the "Roth Cooperative Conversion Act" in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

## 719.606 Conversion of existing improvements to cooperative; rental agreements.——

When existing improvements are converted to ownership as a residential cooperative:

(1) (a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2) (a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion, the option of receiving in cash a tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 719.402(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

## 719.608 Notice of intended conversion; time of delivery; content.——

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential cooperative. All such notices shall be given within a 72-hour period.

(2) (a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to cooperative by (name of developer), the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer.

If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer).

6. If you have continuously been a resident of these apartments during the last 180 days:

a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7. If you have any questions regarding this conversion or the Cooperative Act, you may contact the developer or the state agency which regulates cooperatives: The Division of Florida Condominiums, Timeshares, and Mobile Homes, (Tallahassee address and telephone number of division).

(b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 719.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 719.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division not to exceed $50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential cooperative, each developer shall file with the division a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of $100.

## 719.61 Notices.——

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

## 719.612 Right of first refusal.——

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 719.614, and the disclosure documents required by ss. 719.503 and 719.504.

Failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion shall automatically extend the rental agreement, any extension of the rental agreement provided for in s. 719.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but shall not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation shall be damages. In addition to any damages otherwise recoverable by law, the tenant shall be entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof; or

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

## 719.614 Economic information to be provided.——

The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

## 719.616 Disclosure of condition of building and estimated replacement costs.—

(1) Each developer of a residential cooperative created by converting existing, previously occupied improvements to such form of ownership shall disclose the condition of the improvements and the condition of certain components and their current estimated replacement costs.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3) (a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.

2. Structure.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component.

2. The estimated remaining useful life of the component.

3. The estimated current replacement cost of the component, expressed:

a. As a total amount, and

b. As a per unit amount, based upon each unit's proportional share of the common expenses.

4. The structural and functional soundness of the component.

## 719.618 Converter reserve accounts; warranties.——

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a) 1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

**Roof Type……………………………………….Numerator….... Denominator**

Built-up roof without insulation 04 05

Built-up roof with insulation 04 05

Cement tile roof 45 50

Asphalt shingle roof 14 15

Copper roof

Wood shingle roof 09 10

All other types 18 20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(2) (a) The developer shall fund the reserve account required by subsection (1) on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, a determination is made by a three-fourths vote of all unit owners to expend the funds for other purposes.

(4) The developer shall establish the reserve account in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional reserve accounts.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential cooperative and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as to the roof and structural components of the improvements; as to fireproofing and fire protection systems; and as to mechanical, electrical, and plumbing elements serving the improvements, except mechanical elements serving only one unit. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to cooperative and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential cooperative may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 719.503, or s. 719.504, as applicable, with the division prior to October 1, 1994, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Creates a cooperative for such filing in accordance with part I.

2. Gives a notice of intended conversion.

## 719.62 Prohibition of discrimination against nonpurchasing tenants.——

When existing improvements are converted to cooperative, tenants who have not purchased a unit in the cooperative being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

## 719.621 Rulemaking authority-----

The division may adopt rules to administer and ensure compliance with a developer’s obligations with respect to cooperative conversions concerning the filing and noticing of intended conversions, rental agreement extensions, rights of first refusal, and disclosures and post-purchase protections.

## 719.622 Saving clause.——

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 719.606, 719.608, and 719.61. Tenants given such notices shall have a right of first refusal as provided by s. 719.612.

(2) The disclosure provided by s. 719.616 and required by ss. 719.503 and 719.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 719.503 and 719.504.

(3) The provisions of s. 719.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing, gives a notice of intended conversion.

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[**720.407 Recording; notice of recording; applicability and effective date.-**](#_Toc333949859)

# Part I General Provisions

## 720.301 Definitions.——

As used in this chapter, the term:

(1) “Assessment” or “amenity fee” means a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.

(2) “Common area” means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:

(a) Real property the use of which is dedicated to the association or its members by a recorded plat; or

(b) Real property committed by a declaration of covenants to be leased or conveyed to the association.

(3) “Community” means the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term “community” includes all real property, including undeveloped phases, that is or was the subject of a development of regional impact development order, together with any approved modification thereto.

(4) “Declaration of covenants,” or “declaration,” means a recorded written instrument or or instruments in the nature of covenants running with the land which subject the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

(5) “Department” means the Department of Business and Professional Regulation.

(6) “Developer” means a person or entity that:

(a) Creates the community served by the association; or

(b) Succeeds to the rights and liabilities of the person or entity that created the community served by the association, provided that such is evidenced in writing.

(7) “Division” means the Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation.

(8) “Governing documents” means:

(a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;

(b) The articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto; and

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

(9) “Homeowners’ association” or “association” means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term “homeowners’ association” does not include a community development district or other similar special taxing district created pursuant to statute.

(10) “Member” means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof, and includes any person or entity obligated by the governing documents to pay an assessment or amenity fee.

(11) “Parcel” means a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration:

(a) Which is capable of separate conveyance; and

(b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated:

1. By the governing documents to be a member of an association that serves the community; and

2. To pay to the homeowners’ association assessments that, if not paid, may result in a lien.

(12) “Parcel owner” means the record owner of legal title to a parcel.

(13) “Voting interest” means the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.

**720.3015 Short title.—**

This chapter may be cited as the “Homeowners’ Association Act.”

## 720.302 Purposes, scope, and application.——

(1) The purposes of this chapter are to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners’ associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

(2) The Legislature recognizes that it is not in the best interest of homeowners’ associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners’ associations. However, in accordance with s. 720.311, the Legislature finds that homeowners’ associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners’ associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

(3) This chapter does not apply to:

(a) A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or

(b) The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721 or to any nonmandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners’ associations.

(5) Unless expressly stated to the contrary, corporations that operate residential homeowners’ associations in this state shall be governed by and subject to chapter part I of 607, if the association was incorporated under that chapter, or to chapters 617, if the association was corporated under that part, and this chapter. This subsection is intended to clarify existing law.

## 720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls. ——

(1) POWERS AND DUTIES.— An association which operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents.

After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities.

The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.

This subsection does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association.

A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates. An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(2) BOARD MEETINGS.—(See editor’s note following 720.303 for additional language for this section.)

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physiccaly handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(b) Members have the right to attend all meetings of the board. The right to attend such meetings includes the right to speak at such meetings with reference to all designated items. The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, meetings between the board or a committee and the association’s attorney to discuss proposed or pending litigation, or meetings of the board held for the purpose of discussing personnel matters are not required to be open to the members other than directors.

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners′ association.

However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes;; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting. .—

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(d) If 20 percent of the total voting interests petition the board to address an item of business, the board shall 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, take the petitioned item up on an agenda. The board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph (c)2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

(3) MINUTES.-- Minutes of all meetings of the members of an association and of the board of directors of an association must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

(4) OFFICIAL RECORDS.-- The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.

(b) A copy of the bylaws of the association and of each amendment to the bylaws.

(c) A copy of the articles of incorporation of the association and of each amendment thereto.

(d) A copy of the declaration of covenants and a copy of each amendment thereto.

(e) A copy of the current rules of the homeowners’ association.

(f) The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.

(g) A current roster of all members and their mailing addresses and parcel identifications. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

(h) All of the association’s insurance policies or a copy thereof, which policies must be retained for at least 7 years.

(i) A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of 1 year.

(j) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

(k) A copy of the disclosure summary described in s. 720.401(1).

(l) All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(5) INSPECTION AND COPYING OF RECORDS.-- The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association’s providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association’s willful failure to comply with this subsection. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner’s right to inspect records to less than one 8-hour business day per month.

The association may impose fees to cover the costs of providing copies of the official records, including, the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages.

The association may charge up to 25 cents per page for copies made on the association’s photocopier.

If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s.90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney’s express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term “personnel records” does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person’s name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph 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.

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

7. The software and operating system used by the association which allows the 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.

(d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the response.

(6) BUDGETS.—

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves is limited to the extent that the governing documents limit increases in assessments, including reserves. If the budget of the association includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d) the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection. This section does not preclude the termination of a reserve account established pursuant to this paragraph upon approval of a majority of the total voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.

(c) 1. If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.

(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves is applicable only to one budget year.

(g) Funding formulas for reserves authorized by this section must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

a. The total amount necessary, if any, to bring a negative component balance to zero.

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds.

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may not include any type of balloon payments.

(h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present.

Prior to turnover of control of an association by a developer to parcel owners, the developer controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

(7) FINANCIAL REPORTING.-- Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association’s total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b) 1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is other-wise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, re-viewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

(8) ASSOCIATION FUNDS; COMMINGLING.—

(a) All association funds held by a developer shall be maintained separately in the association’s name. Reserve and operating funds of the association shall not be commingled prior to turnover except the association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.

(b) No developer in control of a homeowners association shall commingle any association funds with his or her funds or with the funds of any other homeowners’ association or community association.

(c) Association funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the association board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled association.

(9) APPLICABILITY.-- Sections 720.1601-720-1604 do not apply to a homeowners’ association in which the members have the inspection and copying rights set forth in this section.

(10) RECALL OF DIRECTORS.—

(a) 1. Regardless of any provision to the contrary contained in the governing documents, subject to the provisions of s. 720.307 regarding transition of association control, any member of the board of directors may be recalled and removed from office with or without cause by a majority of the total voting interests.

2. When the governing documents, including the declaration, articles of incorporation, or bylaws, provide that only a specific class of members is entitled to elect a board director or directors, only that class of members may vote to recall those board directors so elected.

(b) 1. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written bal-lots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to binding arbitration proceedings that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member’s written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

5. The agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall, when at least a majority of the board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

(c) 1. If the declaration, articles of incorporation or bylaws specifically provide, the members may also recall and remove a board director or directors by a vote taken at a meeting. If so provided in the governing documents, a special meeting of the members to recall a director or directors of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

2. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more directors. At the meeting, the board shall certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph (d).

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the department a petition for binding arbitration pursuant to the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any director or directors of the board, the recall will be effective upon mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(e) If a vacancy occurs on the board as a result of a recall and less than a majority of the board directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection or in the association documents. If vacancies occur on the board as a result of a recall and a majority or more of the board directors are removed, the vacancies shall be filled by members voting in favor of the recall; if removal is at a meeting, any vacancies shall be filled by the members at the meeting. If the recall occurred by agreement in writing or by written ballot, members may vote for replacement directors in the same instrument in accordance with procedural rules adopted by the division, which rules need not be consistent with this subsection.

(f) If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the member recall meeting, the recall shall be deemed effective and the board directors so recalled shall immediately turn over to the board all records and property of the association.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board’s failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-fullbusiness- day period. The review of a petition under this paragraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

(h) If a director who is removed fails to relinquish his or her office or turn over records as required under this section, the circuit court in the county where the association maintains its principal office may, upon the petition of the association, summarily order the director to relinquish his or her office and turn over all association records upon application of the association.

(i) The minutes of the board meeting at which the board decides whether to certify the recall are an official association record. The minutes must record the date and time of the meeting, the decision of the board, and the vote count taken on each board member subject to the recall. In addition, when the board decides not to certify the recall, as to each vote rejected, the minutes must identify the parcel number and the specific reason for each such rejection.

(j) When the recall of more than one board director is sought, the written agreement, ballot, or vote at a meeting shall provide for a separate vote for each board director sought to be recalled.

(k) A board member who has been recalled may file a petition pursuant to ss. 718.112(2)(j) and 718.1255 and the rules adopted challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as respondents.

(l) The division may not accept for filing a recall petition, whether filed pursuant to paragraph (b), paragraph (c), paragraph (g), or paragraph (k) and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(11) WINDSTORM INSURANCE.—Windstorm insurance coverage for a group of no fewer than three communities created and operating under chapter 718, chapter 719, this chapter, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. Such insurance coverage is deemed adequate windstorm coverage for purposes of this chapter.

(12) COMPENSATION PROHIBITED.—A director, officer, or committee member of the association may not directly receive any salary or compensation from the association for the performance of duties as a director, officer, or committee member and may not in any other way benefit financially from service to the association. This subsection does not preclude:

(a) Participation by such person in a financial benefit accruing to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets.

(b) Reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to approval in accordance with procedures established by the association’s governing documents or, in the absence of such procedures, in accordance with an approval process established by the board.

(c) Any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members.

(d) Any fee or compensation authorized in the governing documents.

(e) Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members.

(f) A developer or its representative from serving as a director, officer, or committee member of the association and benefitting financially from service to the association.

(13) REPORTING REQUIREMENT.—REPEALED. Editor’s Note: Expired pursuant to its own terms, effective July 1, 2016.

## 720.3032 Notice of association information; preservation from Marketable Record Title Act.—

(1) Any property owners’ association desiring to preserve covenants from potential termination after 30 years by operation of chapter 712 may record in the official records of each county in which the community is located a notice specifying:

(a) The legal name of the association.

(b) The mailing and physical addresses of the association.

(c) The names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community.

(d) The name, address, and telephone number for the current community association management company or community association manager, if any.

(e) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712.

(f) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment.

(g) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat.

(h) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

(2) Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. [712.05](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0712/Sections/0712.05.html)(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712.

Notice of   (Name of association)   under s. [720.3032](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0720/Sections/0720.3032.html), Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association:

2. Mailing and physical addresses of association:

3. Names of the subdivision plats, or, if none, common name of community:

4. Name, address, and telephone number for management company, if any:

5. This notice does   does not   constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

  (Name of instrument)

  (Official Records Book where recorded & page)

  (List of instruments)

  (List of recording information)

7. The legal description of the community affected by the listed covenants or restrictions is:   (Legal description, which may be satisfied by reference to a recorded plat)

This notice is filed on behalf of   (Name of association)   as of   (Date)  .

  (Name of association)

By:

  (Name of individual officer)

  (Title of officer)

  (Notary acknowledgment)

(3) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(4) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

## 720.3033 Officers and directors.—

(1) (a) Within 90 days after being elected or appointed to the board, each director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members. Within 90 days after being elected or appointed to the board, in lieu of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider within 1 year before or 90 days after the date of election or appointment.

(b) The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

(c) The association shall retain each director’s written certification or educational certificate for inspection by the members for 5 years after the director’s election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

(2) If the association enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated homeowners’ association, or other entity in which an association director is also a director or officer or is financially interested, the board must:

(a) Comply with the requirements of s. [617.0832](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0617/Sections/0617.0832.html).

(b) Enter the disclosures required by s. [617.0832](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0617/Sections/0617.0832.html) into the written minutes of the meeting.

(c) Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.

(d) At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the association is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

(3) An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. If the board finds that an officer or director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the director’s term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

(4) A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association’s funds or property is removed from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director’s term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.

(5) The association shall maintain insurance or a fidelity bond for all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this subsection, the term “persons who control or disburse funds of the association” includes, but is not limited to, persons authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any insurance or bond. If annually approved by a majority of the voting interests present at a properly called meeting of the association, an association may waive the requirement of obtaining an insurance policy or fidelity bond for all persons who control or disburse funds of the association.

## 720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall be permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(2) If the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants provides options for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel, neither the association nor any architectural, construction improvement, or other such similar committee of the association shall restrict the right of a parcel owner to select from the options provided in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(3) Unless otherwise specifically stated in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, each parcel shall be deemed to have only one front for purposes of determining the required front setback even if the parcel is bounded by a roadway or other easement on more than one side. When the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants do not provide for specific setback limitations, the applicable county or municipal setback limitations shall apply, and neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce or attempt to enforce any setback limitation that is inconsistent with the applicable county or municipal standard or standards.

(4) Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(5) Neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not. Neither the association nor any architectural, construction improvement, or other such similar committee of the association may rely upon a policy or restriction that is inconsistent with the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not, in defense of any action taken in the name of or on behalf of the association against a parcel owner.

## 720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited .—

(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) (a) Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

(b) Any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner’s real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, regardless of any covenants, restric­tions, bylaws, rules, or requirements of the association, one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

(c) This subsection applies to all community development districts and homeowners’ associations, regardless of whether such homeowners’ associa­tions are authorized to impose assessments that may become a lien on the parcel.

(3) Any owner prevented from exercising rights guaranteed by subsection (1) or subsection (2) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

(4) It is the intent of the Legislature to protect the right of parcel owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that "Strategic Lawsuits Against Public Participation" or "SLAPP" suits, as they are typically called, have occurred when members are sued by individuals, business entities, or governmental entities arising out of a parcel owner's appearance and presentation before a governmental entity on matters related to the homeowners' association. However, it is the public policy of this state that government entities, business organizations, and individuals not engage in SLAPP suits because such actions are inconsistent with the right of parcel owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against parcel owners who address matters concerning their homeowners' association will preserve this fundamental state policy, preserve the constitutional rights of parcel owners, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(a) As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government, the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions, or any agencies of these branches which are subject to chapter 286.

(b) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a parcel owner without merit and solely because such parcel owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(c) A parcel owner sued by a governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A parcel owner may petition the court for an order dismissing the action or granting final judgment in favor of that parcel owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's, business organization's or individual's response. The court may award the parcel owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(d) Homeowners' associations may not expend association funds in prosecuting a SLAPP suit against a parcel owner.

(5) (a) Any parcel owner may construct an access ramp if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions:

1. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use.

2. Plans for the ramp must be submitted in advance to the homeowners' association. The association may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces.

(b) The parcel owner must submit to the association an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the parcel requiring the access ramp. Certification used for s. 320.0848 shall be sufficient to meet the affidavit requirement.

(6) Any parcel owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

## 720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights—

(1) Each member and the member’s tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas. The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) The association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member’s tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member’s tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days’ notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the board proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved.The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the association, the association may suspend the rights of the member, or the member’s tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall 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, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel’s occupant, licensee, or invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member’s tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.

## 720.3053 Failure to fill vacancies on board of directors sufficient to constitute a quorum; appointment of receiver upon petition of member.—

(1) If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member may give notice of the member’s intent to apply to the circuit court within whose jurisdiction the association lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned member of  
...(name of homeowners’ association)... intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of directors sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and ttorney fees payable from association funds.

...(name and address of petitioning member)...

(2) The notice required by subsection (1) must be provided by the member to the association by certified mail or personal delivery, must be posted in a conspicuous place within the homeowners’ association, and must be provided to every member of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a member shall be sent to the address used by the county property appraiser for notice to the member.

(3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the member may proceed with the petition.

(4) If a receiver is appointed, all members shall be given written notice of such appointment as provided in s. 720.313.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney fees. The receiver shall have all powers and duties of a duly constituted board of directors and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

## 720.3055 Contracts for products and services; in writing; bids; exceptions.--

(1) All contracts as further described in this section or any contract that is not to be fully performed within 1 year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter or the governing documents, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association that exceeds 10 percent of the total annual budget of the association, including reserves, the association must obtain competitive bids for the materials, equipment, or services. Nothing contained in this section shall be construed to require the association to accept the lowest bid.

(2) (a) 1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services are not subject to the provisions of this section.

2. A contract executed before October 1, 2004, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to an association under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. An association whose declaration or bylaws provide for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) Nothing contained in this section is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section does not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained in this section shall excuse a party contracting to provide maintenance or management services from compliance with s. [720.309](http://www.flsenate.gov/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0720/Sec309.htm&StatuteYear=2003).

## 720.306 meetings of members; voting and election procedures; amendments.——

(1) QUORUM; AMENDMENTS.--

(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained. A meeting of the members must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting.

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under part I of chapter 607 or chapter 617 is not a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

(Note: The amendments to s. 720.306, Florida Statutes, provided in this act shall not apply to or affect any vested rights recognized by any court order or judgment in any action commenced prior to July 1, 2003, and any such vested rights so recognized may not be subsequently altered without the consent of the affected parcel owner or owners.)

(d) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the parcel owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association’s governing documents through legal means. Accordingly, and notwithstanding any provision of this paragraph to the contrary:

1. As to any mortgage recorded on or after July 1, 2013, any provision in the association’s governing documents that requires the consent or joinder of some or all mortgagees of parcels or any other portion of the association’s common areas to amend the association’s governing documents or for any other matter is enforceable only as to amendments to the association’s governing documents that adversely affect the priority of the mortgagee’s lien or the mortgagee’s rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

2. As to mortgages recorded before July 1, 2013, any existing provisions in the association’s governing documents requiring mortgagee consent are enforceable.

3. In securing consent or joinder, the association is entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each parcel owner whose parcel is encumbered by a mortgage of record any information that the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association is deemed to have complied with this requirement by making the written request of the parcel owners required under this subparagraph. Any notices required to be sent to the mortgagees under this subparagraph shall be sent to all available addresses provided to the association.

4. Any notice to the mortgagees required under subparagraph 3. may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment.

5. For those amendments requiring mortgagee consent on or after July 1, 2013, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county in which the declaration is recorded.

6. Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraph 1. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This subparagraph applies to all mortgages, regardless of the date of recordation of the mortgage.

(e) A proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language 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 form: “Substantial rewording. See governing documents for current text.” An amendment to a governing document is effective when recorded in the public records of the county in which the community is located.

(f) An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner’s mailing address on the property appraiser’s website for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

(2) ANNUAL MEETING.--The association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.

(3) SPECIAL MEETINGS.--Special meetings must be held when called by the board of directors or, unless a different percentage is stated in the governing documents, by at least 10 percent of the total voting interests of the association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

(4) CONTENT OF NOTICE.--Unless law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which a meeting is called.

(5) NOTICE OF MEETINGS.--The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following:

The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members not less than 14 days prior to the meeting.

Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the association. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the association.

When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

(6) RIGHT TO SPEAK.--Members and parcel owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda.

Notwithstanding any provision to the contrary in the governing documents or any rules adopted by the board or by the membership, a member and a parcel owner have the right to speak for at least 3 minutes on any item, provided that the member or parcel owner submits a written request to speak prior to the meeting. The association may adopt written reasonable rules governing the frequency, duration, and other manner of member and parcel owner statements, which rules must be consistent with this subsection.

(7) ADJOURNMENT.--Unless the bylaws require otherwise, adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to s.720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under s. 607.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

(8) PROXY VOTING.--The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy.

(a) To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

(b) If the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified. Any vote by ballot received after the closing of the balloting may not be considered.

(9) (a) ELECTIONS AND BOARD VACANCIES..--Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association.

Except as provided in paragraph (b) all members of the association are eligible to serve on the board of directors, and a member may nominate himself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist.

If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting.

Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term “any fee, fine, or other monetary obligation” means any delinquency to the association with respect to any parcel. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

(10) RECORDING.--Any parcel owner may tape-record or videotape meetings of the board of directors and meetings of the members. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

## 720.307 Transition of homeowners’ association control in a community.——

With respect to homeowners’ associations:

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of the homeowners’ association when the earlier of the following events occurs:

(a) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners association have been conveyed to members;

(b) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels. For purposes of this section, the term “members other than the developer” shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(c) Upon the developer abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308 for a period of more than 2 years;

(d) Upon the developer filing a petition seeking protection under chapter 7 of the federal Bankruptcy Code;

(e) Upon the developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or

(f) Upon a receiver for the developer being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the association or its members.

(2) Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners’ association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members.

(3) The developer is entitled to elect at least one member of the board of directors of the homeowners’ association as long as the developer holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the community. After the developer relinquishes control of the homeowners’ association, the developer may exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the homeowners’ association or selecting the majority of the members of the board of directors.

(4) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners’ association, the developer shall, at the developer’s expense, within no more than 90 days deliver the following documents to the board:

(a) All deeds to common property owned by the association.

(b) The original of the association’s declarations of covenants and restrictions.

(c) A certified copy of the articles of incorporation of the association.

(d) A copy of the bylaws.

(e) The minute books, including all minutes.

(f) The books and records of the association.

(g) Policies, rules, and regulations, if any, which have been adopted.

(h) Resignations of directors who are required to resign because the developer is required to relinquish control of the association.

(i) The financial records of the association from the date of incorporation through the date of turnover.

(j) All association funds and control thereof.

(k) All tangible property of the association.

(l) A copy of all contracts which may be in force with the association as one of the parties.

(m) A list of the names and addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the association.

(n) Any and all insurance policies in effect.

(o) Any permits issued to the association by governmental entities.

(p) Any and all warranties in effect.

(q) A roster of current homeowners and their addresses and telephone numbers and section and lot number.

(r) All other contracts in effect to which the association is a party.

(t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records of the association to determine that the developer was charged and paid the proper amounts of assessments. This paragraph applies to associations with a date of incorporation after December 31, 2007.

(4) This section does not apply to a homeowners’ association in existence on the effective date of this act, or to a homeowners’ association, no matter when created, if such association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereof.

## 720.3075 Prohibited clauses in homeowners’ association documents. -----

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of certain types of clauses in homeowners’ association documents, including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association, which either have the effect of or provide that:

(a) A developer has the unilateral ability and right to make changes to the homeowners’ association documents after the transition of homeowners’ association control in a community from the developer to the nondeveloper members, as set forth in s. 720.307, has occurred.

(b) A homeowners’ association is prohibited or restricted from filing a lawsuit against the developer, or the homeowners’ association is otherwise effectively prohibited or restricted from bringing a lawsuit against the developer.

(c) After the transition of homeowners’ association control in a community from the developer to the nondeveloper members, as set forth in s. 720.307, has occurred, a developer is entitled to cast votes in an amount that exceeds one vote per residential lot. Such clauses are declared null and void as against the public policy of this state.

(2) The public policy described in subsection (1) prohibits the inclusion or enforcement of such clauses created on or after the effective date of section 3 of chapter 98-261, Laws of Florida.

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of one portable, removable United States flag by property owners. However, the flag must be displayed in a respectful manner, consistent with Title 36 U.S.C. Chapter.

(4) (a) The Legislature finds that the use of Florida-friendly landscaping and other water use and pollution prevention measures to conserve or protect the state’s water resources serves a compelling public interest and that the participation of homeowners’ associations and local governments is essential to the state’s efforts in water conservation and water quality protection and restoration.

(b) Homeowners’ association documents, including declarations of covenants, articles of incorporation or bylaws, may not prohibit of be enforced so as to prohibit any property owner from implementing Florida friendly landscaping, as defined in s. 373.185, on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.

(5) It is declared the public policy of the state that prior to transition of control of a homeowners’ association in a community from the developer to the nondeveloper members, as set forth in s. 720.307, the right of the developer to amend the association’s governing documents is subject to a test of reasonableness, which prohibits the developer from unilaterally making amendments to the governing documents that are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common property; or materially shift economic burdens from the developer to the existing nondeveloper members.

## 720.308 Assessments and charges. ——

(1) ASSESSMENTS.-- For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member’s proportional share thereof.

(a) Assessments levied pursuant to the annual budget or special assessment must be in the member’s proportional share of expenses as described I the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors.

(b) While the developer is in control of the homeowners’ association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association.

(c) Assessments or contingent assessments may be levied by the board of directors of the association to secure the obligation of the homeowners’ association for insurance acquired from a self-insurance fund authorized and operating pursuant to s. 624.462.

(d) This section does not apply to n association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of October 1, 1995 together with any approved modifications thereto.

(2) GUARANTEES OF COMMON EXPENSES.—

(a) Establishment of a guarantee.—If a guarantee of the assessments of parcel owners is not included in the purchase contracts or declaration, any agreement establishing a guarantee shall only be effective upon the approval of a majority of the voting interests of the members other than the developer. Approval shall be expressed at a meeting of the members voting in person or by limited proxy or by agreement in writing without a meeting if provided in the bylaws. Such guarantee must meet the requirements of this section.

(b) Guarantee period.—The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

1. The ending date or event shall be the same for all of the members of an association, including members in different phases of the development.

2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

3. The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) MAXIMUM LEVEL OF ASSESSMENTS.—The stated dollar amount of the guarantee shall be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member’s proportionate share of the expenses as described in the governing documents.

(4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.—The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.

(b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment revenue- generating activity shall be considered separately. Any portion of the parcel assessment which is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

(5) CALCULATION OF GUARANTOR’S FINAL OBLIGATION.—The guarantor’s total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula: the guarantor shall pay any deficits that exceed the guaranteed amount, less the total regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(6) EXPENSES.—Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the operating expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment- revenue-generating activity shall be considered separately. Any portion of the parcel assessment which is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

## 720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The person making the payment is entitled to a satisfaction of the lien upon payment in full.

(b) By recording a notice in substantially the following form, a parcel owner or the parcel owner’s agent or attorney may require the association to enforce a recorded claim of lien against his or her parcel:

NOTICE OF CONTEST OF LIEN TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days following the date of service of this notice. Executed this .... day of ...., ...(year)....Signed: ...(Owner or Attorney)... After the notice of a contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or the most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing.

After service, the association has 90 days in which to file an action to enforce the lien and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the parcel owner or by any other person claiming an interest in the parcel.

(c) The association may bring an action in its name to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid assessments.

(d) A release of lien must be in substantially the following form:

##### RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $......, hereby waives and releases its lien and right to claim a lien for unpaid assessments through ......,…(year)…, recorded in the Official Records Book ...... at Page ......, of the public records of ...... County, Florida, for the following described real property:

(PARCEL NO. ...... OR LOT AND BLOCK)\_ OF\_…(subdivision name)…

SUBDIVISION AS SHOWN IN THE PLAT THEREOF, RECORDED

AT PLAT BOOK ......, PAGE ......, OF THE OFFICIAL RECORDS OF

......COUNTY, FLORIDA.

(or insert appropriate metes and bounds description here)

…(Signature of Authorized Agent)… …(Signature of Witness)…

…(Print Name)… …(Print Name)…

…(Signature of Witness)…

…(Print Name)…

Sworn to (or affirmed) and subscribed before me this .. .... day of .... .., …(year)

…, by …(name of person making statement)….

…(Signature of Notary Public)…

…(Print, type, or stamp commissioned name of Notary Public)…

Personally Known...... OR Produced...... as identification.

(e) If the parcel owner remains in possession of the parcel after a foreclosure judgment has been entered, the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

(f) The association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the parcel.

(2) (a) A parcel owner, regardless of how his or her title to property has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments that come due while he or she is the parcel owner. The parcel owner’s liability for assessments may not be avoided by waiver or suspension of the use or enjoyment of any common area or by abandonment of the parcel upon which the assessments are made.

(b) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner.

(c) Notwithstanding anything to the contrary contained in this section, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee’s acquisition of title, shall be the lesser of:

1. The parcel’s unpaid common expenses and regular periodic or special assessments that accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

2. One percent of the original mortgage debt. The limitations on first mortgagee liability provided by this paragraph apply only if the first mortgagee filed suit against the parcel owner and initially joined the association as a defendant in the mortgagee foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

(d) An association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney fees and costs that came due before the association’s acquisition of title in favor of any other association, as defined in s. 718.103(2) or s.720.301(9), which holds a superior lien interest on the parcel. This paragraph is intended to clarify existing law.

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law.

(4) A homeowners’ association may not file a record of lien against a parcel for unpaid assessments unless a written notice or demand for past due assessments as well as any other amounts owed to the association pursuant to its governing documents has been made by the association. The written notice or demand must:

(a) Provide the owner with 45 days following the date the notice is deposited in the mail to make payment for all amounts due, including, but not limited to, any attorney fees and actual costs associated with the preparation and delivery of the written demand. The notice must be in substantially the following form:

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##### NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Parcel or (lot/block)…(lot/parcel number)… of …(name of association)…

The following amounts are currently due on your account to …(name of association)…, and must be paid within 45 days after your receipt of this letter. This letter shall serve as the association’s notice of intent to record a Claim of Lien against your property no sooner than 45 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due …(dates)… $.......

Late fee, if applicable $.......

Interest through …(dates)…\* $.......

Certified mail charges $.......

Other costs $.......

TOTAL OUTSTANDING $.......

\*Interest accrues at the rate of ...... percent per annum.

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(b) Be sent by registered or certified mail, return receipt requested, and by first-class United States Mail to the parcel owner at his or her last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner’s address as reflected in the records of the association is not the parcel address. If the address reflected in the records is outside the United States, then sending the notice to that address and to the parcel address by first-class United States mail is sufficient.

(5) The association may bring an action in its name to foreclose a lien for unpaid assessments secured by a lien in the same manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The action to foreclose the lien may not be brought until 45 days after the parcel owner has been provided notice of the association’s intent to foreclose and collect the unpaid amount. The notice must be given in the manner provided in paragraph (4)(b) and the notice may not be provided until the passage of the 45 days required in paragraph (4)(a). The notice must be in substantially the following form:

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##### DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the …(type of assessment)… assessment to…(name of association)…. The association intends to foreclose the lien and collect the unpaid amount within 45 days of this letter being provided to you.

You owe the interest accruing from…(month/year)…to the present. As of the date of this letter, the total amount due with interest is $....... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses, and telephone numbers of association representative).

(a) The association may recover any interest, late charges, costs, and reasonable attorney fees incurred in a lien foreclosure action or in an action to recover a money judgment for the unpaid assessments.

(b) The time limitations in this subsection do not apply if the parcel is subject to a foreclosure action or forced sale of another party, or if an owner of the parcel is a debtor in a bankruptcy proceeding.

(6) If after service of a summons on a complaint to foreclose a lien the parcel is not the subject of a mortgage foreclosure or a notice of tax certificate sale, the parcel owner is not a debtor in bankruptcy proceedings, or the trial of or trial docket for the lien foreclosure action is not set to begin within 30 days, the parcel owner may serve and file with the court a qualifying offer at any time before the entry of a foreclosure judgment. For purposes of this subsection, the term “qualifying offer” means a written offer to pay all amounts secured by the lien of the association plus amounts accruing during the pendency of the offer. The parcel owner may make only one qualifying offer during the pendency of a foreclosure action. If a parcel becomes the subject of a mortgage foreclosure or a notice of tax certificate sale while a qualifying offer is pending, the qualifying offer becomes voidable at the election of the association. If the parcel owner becomes a debtor in bankruptcy proceedings while a qualifying offer is pending, the qualifying offer becomes void.

(a) The parcel owner shall deliver a copy of the filed qualifying offer to the association’s attorney by hand delivery, obtaining a written receipt, or by certified mail, return receipt requested.

(b) The parcel owner’s filing of the qualifying offer with the court stays the foreclosure action for the period stated in the qualifying offer, which may not exceed 60 days following the date of service of the qualifying offer and no sooner than 30 days before the date of trial, arbitration, or the beginning of the trial docket, whichever occurs first,, to permit the parcel owner to pay the qualifying offer to the association plus any amounts accruing during the pendency of the offer.

(c) The qualifying offer must be in writing, be signed by all owners of the parcel and the spouse of any owner if the spouse resides in or otherwise claims a homestead interest in the parcel, be acknowledged by a notary public, and be in substantially the following form:

##### QUALIFYING OFFER AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085

I/We, [Name(s) of Parcel Owner(s)], admit the following:

1. The total amount due the association is secured by the lien of the association.

2. The association is entitled to foreclose its claim of lien and obtain a foreclosure judgment for the total amount due if I/we breach this qualifying offer by failing to pay the amount due by the date specified in this qualifying offer.

3. I/We will not permit the priority of the lien of the association or the amounts secured by the lien to be endangered.

4. I/We hereby affirm that the date(s) by which the association will receive $ [specify amount] as the total amount due is [specify date, no later than 60 days after the date of service of the qualifying offer and at least 30 days before the trial or arbitration date], in the following amounts and dates:

5. I/We hereby confirm that I/we have requested and have received from the homeowners’ association a breakdown and total of all sums due the association and that the amount offered above is equal to or greater than the total amount provided by the association.

6. This qualifying offer operates as a stay to all portions of the foreclosure action which seek to collect unpaid assessments as provided in s. 720.3085. Signed: ...(Signatures of all parcel owners and spouses, if any)...Sworn to and subscribed this ...(date)... day of ...(month)..., ...(year)..., before the undersigned authority. Notary Public: ...(Signature of notary public)...

If the parcel owner makes a qualifying offer under this subsection, the association may not add the cost of any legal fees incurred by the association within the period of the stay other than costs acquired in defense of a mortgage foreclosure action concerning the parcel, a bankruptcy proceeding in which the parcel owner is a debtor, or in response to filings by a party other than the association in the lien foreclosure action of the association.

(7) If the parcel owner breaches the qualifying offer, the stay shall be vacated and the association may proceed in its action to obtain a foreclosure judgment against the parcel and the parcel owners for the amount in the qualifying offer and any amounts accruing after the date of the qualifying offer.

(8) (a) If the parcel is occupied by a tenant and the parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all the monetary obligations of the parcel owner related to the parcel have been paid in full to the association and the association releases the tenant or until the tenant discontinues tenancy in the parcel.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 720.3085(8), Florida Statutes, we demand that you make your rent payments directly to the homeowners’ association and continue doing so until the association notifies you otherwise. Payment due the homeowners’ association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to (full address)…, payable to … (name)…. Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with eh next rental period. Pursuant to section 720.3085(8), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

2. A tenant is immune from any claim by the parcel owner related to the rent timely paid to the association after the association has made written demand..

(b) If the tenant paid rent to the landlord or parcel owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the parcel owner until the association releases the tenant or the tenant discontinues tenancy in the unit. The association shall, upon request, provide the tenant with written receipts for payments made. The association shall mail written notice to the parcel owner of the association’s demand that the tenant pay monetary obligations to the association.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant’s landlord. The tenant shall be given a credit against rents due to the landlord in the amount of assessments paid to the association.

(d) The association may issue notice under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a monetary obligation. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

(e) The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the association.

(f) A court may supersede the effect of this subsection by appointing a receiver.

## 720.30851 Estoppel certificates.—

Within 10 business days after receiving a written or electronic request for an estoppel certificate from a parcel owner or the parcel owner’s designee, or a parcel mortgagee or the parcel mortgagee’s designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(1) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

(a) Date of issuance:

(b) Name(s) of the parcel owner(s) as reflected in the books and records of the association:

(c) Parcel designation and address:

(d) Parking or garage space number, as reflected in the books and records of the association:

(e) Attorney’s name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

(f) Fee for the preparation and delivery of the estoppel certificate:

(g) Name of the requestor:

(h) Assessment information and other information:

**ASSESSMENT INFORMATION:**

1. The regular periodic assessment levied against the parcel is $  per   (insert frequency of payment)  .

2. The regular periodic assessment is paid through   (insert date paid through)  .

3. The next installment of the regular periodic assessment is due   (insert due date)   in the amount of $ .

4. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the parcel owner for a specific parcel is provided.

5. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

**OTHER INFORMATION:**

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due?   (Yes)    (No)  . If yes, specify the type and amount of the fee.

7. Is there any open violation of rule or regulation noticed to the parcel owner in the association official records?   (Yes)    (No)  .

8. Do the rules and regulations of the association applicable to the parcel require approval by the board of directors of the association for the transfer of the parcel?   (Yes)    (No)  . If yes, has the board approved the transfer of the parcel?   (Yes)    (No)  .

9. Is there a right of first refusal provided to the members or the association?   (Yes)    (No)  . If yes, have the members or the association exercised that right of first refusal?   (Yes)    (No)  .

10. Provide a list of, and contact information for, all other associations of which the parcel is a member.

11. Provide contact information for all insurance maintained by the association.

12. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(2) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the parcel has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(3) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person’s successors and assigns.

(4) If an association receives a request for an estoppel certificate from a parcel owner or the parcel owner’s designee, or a parcel mortgagee or the parcel mortgagee’s designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(5) A summary proceeding pursuant to s. [51.011](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0051/Sections/0051.011.html) may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney fees.

(6) An association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed $150.

(7) If estoppel certificates for multiple parcels owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those parcels may be delivered in one or more estoppel certificates, and, even though the fee for each parcel shall be computed as set forth in subsection (6), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

(a) For 25 or fewer parcels, $750.

(b) For 26 to 50 parcels, $1,000.

(c) For 51 to 100 parcels, $1,500.

(d) For more than 100 parcels, $2,500.

(8) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(9) The fees specified in this section shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

## 720.3086 Financial report. ——

In a residential subdivision in which the owners of lots or parcels must pay mandatory maintenance or amenity fees to the subdivision developer or to the owners of the common areas, recreational facilities, and other properties serving the lots or parcels, the developer or owner of such areas, facilities, or properties shall make public, within 60 days following the end of each fiscal year, a complete financial report of the actual, total receipts of mandatory maintenance or amenity fees received by it, and an itemized listing of the expenditures made by it from such fees, for that year. Such report shall be made public by mailing it to each lot or parcel owner in the subdivision, by publishing it in a publication regularly distributed within the subdivision, or by posting it in prominent locations in the subdivision. This section does not apply to amounts paid to homeowner association pursuant to chapter 617, chapter 718, chapter 719, chapter 721, or chapter 723, or to amounts paid to local governmental entities, including special districts.

## 720.309 Agreements entered into by the association. ——

(1) Any grant or reservation made by any document, and any contract that has a term greater than 10 years, that is made by an association before control of the association is turned over to the members other than the developer, and that provides for the operation, maintenance, or management of the association or common areas, must be fair and reasonable.

(2) If the governing documents provide for the cost of communications services as defined in s. 202.11, information services or Internet services obtained pursuant to a bulk contract shall be deemed an operating expense of the association. If the governing documents do not provide for such services, the board may contract for the services, and the cost shall be deemed an operating expense of the association but must be allocated on a per-parcel basis rather than a percentage basis, notwithstanding that the governing documents provide for other than an equal sharing of operating expenses. Any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all parcel owners may be changed by a majority of the voting interests present at a regular or special meeting of the association in order to allocate the cost equally among all parcels.

(a) Any contract entered into by the board may be canceled by a majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. Any member may make a motion to cancel such contract, but if no motion is made or if such motion fails to obtain the required vote, the contract shall be deemed ratified for the term expressed therein.

(b) Any contract entered into by the board must provide, and shall be deemed to provide if not expressly set forth therein, that a hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person, or a parcel owner who receives supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Families pursuant to s. 414.31, may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and may not be required to pay any operating expenses charge related to such service for those parcels. If fewer than all parcel owners share the expenses of the communications services, information services, or Internet services, the expense must be shared by all participating parcel owners. The association may use the provisions of s. 720.3085 to enforce payment by the parcel owners receiving such services.

(c) A resident of any parcel, whether a tenant or parcel owner, may not be denied access to available franchised, licensed, or certificated cable or video service providers if the resident pays the provider directly for services. A resident or a cable or video service provider may not be required to pay anything of value in order to obtain or provide such service except for installation charges agreed to between the resident and the service provider.

## 720.31 Recreational leaseholds; right to acquire; escalation clauses. ——

(1) Any lease of recreational or other commonly used facilities serving a community, which lease is entered into by the association or its members before control of the homeowners’ association is turned over to the members other than the developer, must provide as follows:

(a) That the facilities may not be offered for sale unless the homeowners’ association has the option to purchase the facilities, provided the homeowners’ association meets the price and terms and conditions of the facility owner by executing a

contract with the facility owner within 90 days, unless agreed to otherwise, from the date of mailing of the notice by the facility owner to the homeowners’ association. If the facility owner offers the facilities for sale, he shall notify the homeowners’ association in writing stating the price and the terms and conditions of sale.

(b) If a contract between the facility owner and the association is not executed within such 90-day period, unless extended by mutual agreement, then, unless the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his notice to the homeowners’ association, he has no further obligations under this subsection, and his only obligation shall be as set forth in subsection (2).

(c) If the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his notice to the homeowners’ association, the homeowners’ association will have an additional 10 days to meet the price and terms and condition of the facility owner by executing a contract.

(2) If a facility owner receives a bona fide offer to purchase the facilities that he intends to consider or make a counteroffer to, his only obligations shall be to notify the homeowners’ association that he has received an offer, to disclose the price and material terms and conditions upon which he would consider selling the facilities, and to consider any offer made by the homeowners’ association. The facility owner shall be under no obligation to sell to the homeowners’ association or to interrupt or delay other negotiations, and he shall be free at any time to execute a contract for the sale of the facilities to a party or parties other than the homeowners’ association.

(3) (a) As used in subsections (1) and (2), the term “notify” means the placing of a notice in the United States mail addressed to the president of the homeowners’ association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection (1), the term “offer” means any solicitation by the facility owner directed to the general public.

(4) This section does not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the facility owner were to die intestate.

(b) Any transfer by gift, devise, or operation of law.

(c) Any transfer by a corporation to an affiliate. As used herein, the term “affiliate” means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer to a governmental or quasi-governmental entity.

(e) Any conveyance of an interest in the facilities incidental to the financing of such facilities.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering the facilities or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants in common owning the facilities.

(h) The purchase of the facilities by a governmental entity under its powers of eminent domain.

(5) (a) The Legislature declares that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases for recreational facilities, land, or other commonly used facilities that serve residential communities, and such clauses are hereby declared void.

For purposes of this section, an escalation clause is any clause in a lease which provides that the rental rate under the lease or agreement is to increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) This public policy prohibits the inclusion of such escalation clauses in leases entered into after the effective date of this amendment.

(c) This section is inapplicable:

1. If the lessor is the Federal Government, this state, any political subdivision of this state; or

2. To a homeowners’ association that is in existence on the effective date of this act, or to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

(6) An association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas, and other recreational facilities. An association may enter into such agreements regardless of whether the lands or facilities are contiguous to the lands of the community or whether such lands or facilities are intended to provide enjoyment, recreation, or other use or benefit to the owners. All leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to recording the declaration, agreements acquiring leaseholds, memberships, or other possessory or use interests not entered into within 12 months after recording the declaration may be entered into only if authorized by the declaration as a material alteration or substantial addition to the common areas or association property. If the declaration is silent, any such transaction requires the approval of 75 percent of the total voting interests of the association. The declaration may provide that the rental, membership fees, operations, replacements, or other expenses are common expenses; impose covenants and restrictions concerning their use; and contain other provisions not inconsistent with this subsection. An association exercising its rights under this subsection may join with other associations that are part of the same development or with a master association responsible for the enforcement of shared covenants, conditions, and restrictions in carrying out the intent of this subsection. This subsection is intended to clarify law in existence before July 1, 2010.

## 720.311 Dispute resolution. ——

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2) (a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of a demand for presuit mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these

proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or to enforce a mediated settlement agreement. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association.

When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. 720.303. An aggrieved party shall serve on the responding party a written demand to participate in presuit mediation in substantially the following form:

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##### STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, ................, hereby demands that ................, as the responding party, engage in mandatory presuit mediation in connection with the following disputes, which by statute are of a type that are subject to presuit mediation:

(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)

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Pursuant to section 720.311, Florida Statutes, this demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to participate in the mediation process, suit may be brought against you without further warning.

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists them in exploring possible opportunities for resolving part or all of the dispute. By agreeing to participate in presuit mediation, you are not bound in any way to change your position. Furthermore, the mediator has no authority to make any decisions in this matter or to determine who is right or wrong and merely acts as a facilitator to ensure that each party understands the position of the other party and that all options for reasonable settlement are fully explored. If an agreement is reached, it shall be reduced to writing and becomes a binding and enforceable commitment of the parties. A resolution of one or more disputes in this fashion avoids the need to litigate these issues in court. The failure to reach an agreement, or the failure of a party to participate in the process, results in the mediator declaring an impasse in the mediation, after which the aggrieved party may proceed to court on all outstanding, unsettled disputes. If you have failed or refused to participate in the entire mediation process, you will not be entitled to recover attorney fees, even if you prevail. The aggrieved party has selected and hereby lists five certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity is required ethically to decline to accept engagement.

The mediators that we suggest, and their current hourly rates, are as follows:

(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.) You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The Florida Supreme Court can provide you a list of certified mediators. Unless otherwise agreed by the parties, section 720.311(2)(b), Florida Statutes, requires that the parties share the costs of presuit mediation equally, including the fee charged by the mediator. An average mediation may require three to four hours of the mediator’s time, including some preparation time, and the parties would need to share equally the mediator’s fees as well as their own attorney fees if they choose to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediators may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator’s estimated fees and to forward this amount or such other reasonable advance deposits as the mediator requires for this purpose. Any funds deposited will be returned to you if these are in excess of your share of the fees incurred. To begin your participation in presuit mediation to try to resolve the dispute and avoid further legal action, please sign below and clearly indicate which mediator is acceptable to you. We will then ask the mediator to schedule a mutually convenient time and place for the mediation conference to be held. The mediation conference must be held within ninety (90) days of this date, unless extended by mutual written agreement. In the event that you fail to respond within 20 days from the date of this letter, or if you fail to agree to at least one of the mediators that we have suggested or to pay or prepay to the mediator one-half of the costs involved, the aggrieved party will be authorized to proceed with the filing of a lawsuit against you without further notice and may seek an award of attorney fees or costs incurred in attempting to obtain mediation. Therefore, please give this matter your immediate attention. By law, your response must be mailed by certified mail, return receipt requested, and by first-class mail to the address shown on this demand.

........................

RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR

AGREEMENT TO THAT CHOICE.

##### AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in presuit mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

(List acceptable mediator or mediators.)

I/we further agree to pay or prepay one-half of the mediator’s fees and

to forward such advance deposits as the mediator may require for this

purpose.

........................

Signature of responding party #1

........................

Telephone contact information

........................

Signature and telephone contact information of responding party #2 (if

applicable)(if property is owned by more than one person, all owners

must sign)

(b) Service of the statutory demand to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association. The responding party has 20 days from the date of the mailing of the statutory demand to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory demand.

Notwithstanding the foregoing, once the parties have agreed on a mediator, the mediator may reschedule the mediation for a date and time mutually convenient to the parties. The department shall conduct the proceedings through the use of department mediators or refer the disputes to private mediators who have been duly certified by the department as provided in paragraph (c). The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs.

The failure of any party to respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session without the approval of the mediator, shall constitute the failure or refusal to participate in the mediation process and shall operate as an impasse in the presuit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation.

Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs.

The failure of any party to respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session without the approval of the mediator, shall constitute the failure or refusal to participate in the mediation process and shall operate as an impasse in the presuit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation.

Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.

(c) If presuit mediation as described in paragraph (a) is not successful in resolving all issues between the parties, the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration pursuant to the procedures set forth in s. [718.1255](http://www.flsenate.gov/statutes/index.cfm?App_Mode=Display_Statute&Search_String=&URL=Ch0718/Sec1255.htm&StatuteYear=2003) and rules adopted by the division, with the arbitration proceeding to be conducted by a department arbitrator or by a private arbitrator certified by the department. If all parties do not agree to arbitration proceedings following an unsuccessful mediation, any party may file the dispute in court. A final order resulting from nonbinding arbitration is final and enforceable in the courts if a complaint for trial de novo is not filed in a court of competent jurisdiction within 30 days after entry of the order.

As to any issue or dispute that is not resolved at presuit mediation, and as to any issue that is settled at presuit mediation but is thereafter subject to an action seeking enforcement of the mediation settlement, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney fees incurred in the presuit mediation process.

(d) A mediator or arbitrator shall be authorized to conduct mediation or arbitration under this section only if he or she has been certified as a circuit court civil mediator or arbitrator, respectively, pursuant to the requirements established by the Florida Supreme Court. Settlement agreements resulting from mediation shall not have precedential value in proceedings involving parties other than those participating in the mediation to support either a claim or defense in other disputes.

(e) The presuit mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.

## 720.312 Declaration of covenants; survival after tax deed or foreclosure. ——

All provisions of a declaration of covenants relating to a parcel that has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master’s deed, or upon the foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title to the parcel immediately before the delivery of the tax deed or master’s deed or immediately before the foreclosure.

## 720.313 Receivership notification.—

Upon the appointment of a receiver by a court for any reason relating to a homeowners’ association, the court shall direct the receiver to provide to all members written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a member shall be sent to the address used by the county property appraiser for notice to the owner of the property.

## 720.315 Passage of special assessments.—

Before turnover, the board of directors controlled by the developer may not levy a special assessment unless a majority of the parcel owners other than the developer have approved the special assessment by a majority vote at a duly called special meeting of the membership at which a quorum is present.

## 720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association’s principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

## 720.317 Electronic voting.—

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

(1) The association provides each member with:

(a) A method to authenticate the member’s identity to the online voting system.

(b) A method to confirm, at least 14 days before the voting deadline, that the member’s electronic device can successfully communicate with the online voting system.

(c) A method that is consistent with the election and voting procedures in the association’s bylaws.

(2) The association uses an online voting system that is:

(a) Able to authenticate the member’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 member who casts an electronic vote.

(d) 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 member. This paragraph only applies if the association’s bylaws provide for secret ballots for the election of directors.

(e) Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(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 members receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for members to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for members to opt out of online voting after giving consent. Written notice of a meeting at which the board resolution regarding online voting 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.

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

(6) This section may apply to any matter that requires a vote of the members.

## 720.318 Law Enforcement Vehicles—

An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a parcel owner, or who is a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle in an area where the parcel owner, or the tenant, guest, or invitee of the parcel owner, otherwise has a right to park.

# Part II Disclosure Prior to Sale of Residential Parcels

## 720.401 Prospective purchasers subject to association membership requirement; disclosure required; covenants; assessments; contract cancellation.—

(1) (a) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

##### DISCLOSURE SUMMARY

FOR (NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS’ ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $\_\_\_\_\_\_ PER \_\_\_\_\_\_. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $\_\_\_\_ PER \_\_\_\_\_\_.

4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS’ ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS’ ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS $\_\_\_\_\_\_ PER \_\_\_\_\_\_.

7. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

9. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE: PURCHASER:

PURCHASER:

------------------------------------------------

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

(b) Each contract entered into for the sale of property governed by covenants subject to disclosure required by this section must contain in conspicuous type a clause that states:

IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER’S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER’S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER’S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

(c) If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by covenants that are subject to disclosure pursuant to this section, the purchaser may void the contract by delivering to the seller or the seller’s agent or representative written notice canceling the contract within 3 days after receipt of the disclosure summary or prior to closing, whichever occurs first. This right may not be waived by the purchaser but terminates at closing.

(2) This section does not apply to any association regulated under chapter 718, chapter 719, chapter 721, or chapter 723; and also does not apply if disclosure regarding the association is otherwise made in connection with the requirements of chapter 718, chapter 719, chapter 721, or chapter 723.

## 720.402 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a contract of purchase, the declaration of covenants, exhibits to a declaration of covenants, brochures, and newspaper advertising, pays anything of value toward the purchase of a parcel in a community located in this state has a cause of action to rescind the contract or collect damages from the developer for his or her loss before the closing of the transaction. After the closing of the transaction, the purchaser has a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) occurs:

(a) The closing of the transaction;

(b) The issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the purchaser’s residence to allow lawful occupancy of the residence by the purchaser. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the residence may be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract, governing documents, or written agreement for purchase or lease of the parcel; or

(d) In the event there is not a written contract or agreement for sale or lease of the parcel, then the completion by the developer of the common areas and such recreational facilities, whether or not they are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer’s obligation.

Under no circumstances may a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section, the prevailing party may recover reasonable attorney fees. A developer may not expend association funds in the defense of any suit under this section.

# PART III COVENANT REVITALIZATION

## 720.403 Preservation of communities; revival of declaration of covenants.--

## 720.403 Preservation of communities; revival of declaration of covenants.--

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, property owners are encouraged to preserve existing residential and other communities, promote available and affordable housing, protect structural and aesthetic elements of their community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

(3) Part III of this chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is not limited to residential communities.

## 720.403 Preservation of communities; revival of declaration of covenants.--

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, property owners are encouraged to preserve existing residential and other communities, promote available and affordable housing, protect structural and aesthetic elements of their community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

(3) Part III of this chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is not limited to residential communities.

## 720.404 Eligible communities; requirements for revival of declaration.—

Parcel owners in a community are eligible to seek approval from the Department of Community Affairs to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.403(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

## 720.405 Organizing committee; parcel owner approval.--

(1) The proposal to revive a declaration of covenants and an association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(2) The organizing committee shall prepare or cause to be prepared the complete text of the proposed revised declaration of covenants to be submitted to the parcel owners for approval. The proposed revived documents must identify each parcel that is to be subject to the governing documents by its legal description, and by the name of the parcel owner or the person in whose name the parcel is assessed on the last completed tax assessment roll of the county at the time when the proposed revived declaration is submitted for approval by the parcel owners.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(4) The proposed revived declaration and other governing documents for the community shall:

(a) Provide that the voting interest of each parcel owner shall be the same as the voting interest of the parcel owner under the previous governing documents;

(b) Provide that the proportional-assessment obligations of each parcel owner shall be the same as proportional-assessment obligations of the parcel owner under the previous governing documents;

(c) Contain the same respective amendment provisions as the previous governing documents or, if there were no amendment provisions in the previous governing document, amendment provisions that require approval of not less than two-thirds of the affected parcel owners;

(d) Contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents, except as permitted under s. 720.404(3); and

(e) Comply with the other requirements for a declaration of covenants and other governing documents as specified in this chapter.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

## 720.406 Department of Community Affairs; submission; review and determination.--

(1) No later than 60 days after the date the proposed revived declaration and other governing documents are approved by the affected parcel owners, the organizing committee or its designee must submit the proposed revived governing documents and supporting materials to the Department of Community Affairs to review and determine whether to approve or disapprove of the proposal to preserve the residential community. The submission to the department must include:

(a) The full text of the proposed revived declaration of covenants and articles of incorporation and bylaws of the homeowners' association;

(b) A verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto;

(c) The legal description of each parcel to be subject to the revived declaration and other governing documents and a plat or other graphic depiction of the affected properties in the community;

(d) A verified copy of the written consents of the requisite number of the affected parcel owners approving the revived declaration and other governing documents or, if approval was obtained by a vote at a meeting of affected parcel owners, verified copies of the notice of the meeting, attendance, and voting results;

(e) An affidavit by a current or former officer of the association or by a member of the organizing committee verifying that the requirements for the revived declaration set forth in s. 720.404 have been satisfied; and

(f) Such other documentation that the organizing committee believes is supportive of the policy of preserving the residential community and operating, managing, and maintaining the infrastructure, aesthetic character, and common areas serving the residential community.

(2) No later than 60 days after receiving the submission, the department must determine whether the proposed revived declaration of covenants and other governing documents comply with the requirements of this act.

(a) If the department determines that the proposed revived declaration and other governing documents comply with the act and have been approved by the parcel owners as required by this act, the department shall notify the organizing committee in writing of its approval.

(b) If the department determines that the proposed revived declaration and other governing documents do not comply with this act or have not been approved as required by this act, the department shall notify the organizing committee in writing that it does not approve the governing documents and shall state the reasons for the disapproval.

720.407 Recording; notice of recording; applicability and effective date.--

(1) No later than 30 days after receiving approval from the department, the organizing committee shall file the articles of incorporation of the association with the Division of Corporations of the Department of State if the articles have not been previously filed with the division.

(2) No later than 30 days after receiving approval from the division, the president and secretary of the association shall execute the revived declaration and other governing documents approved by the department in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

(4) Immediately after recording the documents, a complete copy of all of the approved recorded documents must be mailed or hand delivered to the owner of each affected parcel. The revived declaration and other governing documents shall be effective upon recordation in the public records with respect to each affected parcel subject thereto, regardless of whether the particular parcel owner approved the revived declaration. Upon recordation, the revived declaration shall replace and supersede the previous declaration with respect to all affected parcels then governed by the previous declaration and shall have the same record priority as the superseded previous declaration. With respect to any affected parcels that had ceased to be governed by the previous declaration as of the recording date, the revived declaration may not have retroactive effect with respect to the parcel and shall take priority with respect to the parcel as of the recording date.

(5) With respect to any parcel that has ceased to be governed by a previous declaration of covenants as of the effective date of this act, the parcel owner may commence an action within 1 year after the effective date of this act for a judicial determination that the previous declaration did not govern that parcel as of the effective date of this act and that any revival of such declaration as to that parcel would unconstitutionally deprive the parcel owner of rights or property. A revived declaration that is implemented pursuant to this act shall not apply to or affect the rights of the respective parcel owner recognized by any court order or judgment in any such action commenced within 1 year after the effective date of this act, and any such rights so recognized may not be subsequently altered by a revived declaration implemented under this act without the consent of the affected property owner.

# Vacation Plan and Timeshare

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# Part I VACATION PLANS AND TIMESHARING

## 721.01 Short title.

This chapter shall be known and may be cited as the “Florida Vacation Plan and Timesharing Act."

## 721.02 Purposes.

The purposes of this chapter are to:

(1) Give statutory recognition to real property timeshare plans and personal property timeshare plans in this state.

(2) Establish procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

(3) Provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans.

(4) Require every timeshare plan offered for sale or created and existing in this state to be subjected to the provisions of this chapter.

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

(6) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of timeshare plans is an emerging, dynamic segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. In order to protect the quality of Florida timeshare plans and the consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of timeshare plans with a duration of at least 3 years that are created with respect to accommodations and facilities that are located in the state or that are offered for sale in the state as provided herein, including, but not limited to, condominiums, cooperatives, undivided interest campgrounds, cruise ships, vessels, houseboats, and recreational vehicles and other motor vehicles, and including vacation clubs, multisite vacation plans, and multiyear vacation and lodging certificates.

## 721.03 Scope of chapter.

(1) This chapter applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations and facilities, if any, are located within this state or offered within this state; provided that:

(a) With respect to a timeshare plan containing accommodations or facilities located in this state which has previously been filed with and approved by the division and which is offered for sale in other jurisdictions within the jurisdictional limits of the United States, the offering or sale of the timeshare plan in such jurisdictions shall not be subject to the provisions of this chapter.

(b) With respect to a timeshare plan containing accommodations or facilities located in this state which is offered for sale outside the jurisdictional limits of the United States, such offer or sale shall be exempt from the requirements of this chapter, provided that the developer shall either file the timeshare plan with the division for approval pursuant to this chapter, or pay an exemption registration fee of $100 and file the following minimum information pertaining to the timeshare plan with the division for approval:

1. The name and address of the timeshare plan.

2. The name and address of the developer and seller, if any.

3. The location and a brief description of the accommodations and facilities, if any, that are located in this state.

4. The number of timeshare interests and timeshare periods to be offered.

5. The term of the timeshare plan.

6. A copy of the timeshare instrument relating to the management and operation of accommodations and facilities, if any, that are located in this state.

7. A copy of the budget required by s. 721.07(5)(t) or s. 721.55(4)(h)5., as applicable.

8. A copy of the management agreement and any other contracts regarding management or operation of the accommodations and facilities, if any, that are located in this state, and which have terms in excess of 1 year.

9. A copy of the provision of the purchase contract to be utilized in offering the timeshare plan containing the following disclosure in conspicuous type immediately above the space provided for the purchaser's signature:

The offering of this timeshare plan outside the jurisdictional limits of the United States of America is exempt from regulation under Florida law, and any such purchase is not protected by the State of Florida. However, the management and operation of any accommodations or facilities located in Florida is subject to Florida law and may give rise to enforcement action regardless of the location of any offer.

(c) All timeshare accommodations or facilities which are located outside the state but offered for sale in this state shall be governed by the following:

1. The offering for sale in this state of timeshare accommodations and facilities located outside the state is subject only to the provisions of ss. 721.01-721.12, 721.18, 721.20, 721.21, 721.26, 721.28, and part II.

2. The division shall not require a developer of timeshare accommodations or facilities located outside of this state to make changes in any timeshare instrument to conform to the provisions of s. 721.07 or s. 721.55. The division shall have the power to require disclosure of those provisions of the timeshare instrument that do not conform to s. 721.07 or s. 721.55 as the director determines is necessary to fairly, meaningfully, and effectively disclose all aspects of the timeshare plan.

3. Except as provided in this subparagraph, the division shall have no authority to determine whether any person has complied with another state’s laws or to disapprove any filing out-of-state, timeshare instrument, or component site document, based solely upon the lack or degree of timeshare regulation in another state. The division may require a developer to obtain and provide to the division existing documentation relating to an out-of-state filing, timeshare instrument, or component site document and prove compliance of same with the laws of that state. In this regard, the division may accept any evidence of the approval or acceptance of any out-of-state filing, timeshare instrument, or component site document with the division pursuant to this section, or the division may accept an opinion letter from an attorney or law firm opining as to the compliance of such out-of-state filing, timeshare instrument, or component site document by another state in lieu of requiring a developer to file the out-of-state filing, timeshare instrument, or component site document with the laws of another state. The division may refuse to approve the inclusion of any out-of-state filing, timeshare instrument, or component site document as part of a public offering statement based upon the inability of the developer to establish the compliance of same with the laws of another state.

4. The division is authorized to enter into an agreement with another state for the purpose of facilitating the processing of out-of-state timeshare instruments or other component site documents pursuant to this chapter and for the purpose of facilitating the referral of consumer complaints to the appropriate state.

5. Notwithstanding any other provision of this paragraph, the offer, in this state, of an additional interest to existing purchasers in the same timeshare plan, the same nonspecific multisite timeshare plan, or the same component site of a multisite timeshare plan with accommodations and facilities located outside of this state shall not be subject to the provisions of this chapter if the offer complies with the provisions of s. 721.11(4).

(2) When a timeshare plan is subject to both the provisions of this chapter and the provisions of chapter 718 or chapter 719, the plan shall meet the requirements of both chapters unless exempted as provided in this section. The division shall have the authority to adopt rules differentiating between timeshare condominiums and nontimeshare condominiums, and between timeshare cooperatives and nontimeshare cooperatives, in the interpretation and implementation of chapters 718 and 719, respectively. In the event of a conflict between the provisions of this chapter and the provisions of chapter 718 or chapter 719, the provisions of this chapter shall prevail.

(3) [**(See also: 61B-40**](#FAC_TimeshareAccounting)**)** A timeshare plan which is subject to the provisions of chapter 718 or chapter 719, if fully in compliance with the provisions of this chapter, is exempt from the following:

(a) Sections 718.202 and 719.202, relating to sales or reservation deposits prior to closing.

(b) Sections 718.502 and 719.502, relating to filing prior to sale or lease.

(c) Sections 718.503 and 719.503, relating to disclosure prior to sale.

(d) Sections 718.504 and 719.504, relating to prospectus or offering circular.

(e) Part VI of chapter 718 and part VI of chapter 719, relating to conversion of existing improvements to the condominium or cooperative form of ownership, respectively, provided that a developer converting existing improvements to a timeshare condominium or timeshare cooperative must comply with ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606, 719.608, 719.61, and 719.62, if applicable, and, if the existing improvements received a certificate of occupancy more than 18 months before such conversion, one of the following:

1. The accommodations and facilities shall be renovated and improved to a condition such that the remaining useful life in years of the roof, plumbing, air-conditioning, and any component of the structure which has a useful life less than the useful life of the overall structure is equal to the useful life of accommodations or facilities that would exist if such accommodations and facilities were newly constructed and not previously occupied.

2. The developer shall fund reserve accounts for capital expenditures and deferred maintenance for the roof, plumbing, air-conditioning, and any component of the structure the useful life of which is less than the useful life of the overall structure. The reserve accounts shall be funded for each component in an amount equal to the product of the estimated current replacement cost of such component as of the date of such conversion (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state) multiplied by a fraction, the numerator of which shall be the age of the component in years (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state) and the denominator of which shall be the total useful life of the component in years (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state). Alternatively, the reserve accounts may be funded for each component in an amount equal to the amount that, except for the application of this subsection, would be required to be maintained pursuant to s. 718.618(1) or s. 719.618(1). The developer shall fund the reserve accounts contemplated in this subparagraph out of the proceeds of each sale of a timeshare interest, on a pro rata basis, in an amount not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership allocable to the timeshare interest sold. When an owners’ association makes an expenditure of reserve account funds before the developer has initially sold all timeshare interests, the developer shall make a deposit in the reserve account if the reserve account is insufficient to pay the expenditure. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such timeshare interest had the timeshare interest been initially sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding.

3. The developer shall provide each purchaser with a warranty of fitness and merchantability pursuant to s. 718.618(6) or s. 719.618(6).

(4) The treatment of timeshare estates for ad valorem tax purposes and special assessments shall be as prescribed in chapters 192 through 200.

(5) Membership camping plans shall be subject to the provisions of ss. 509.501-509.512 and not to the provisions of this chapter.

(6) Unless otherwise provided herein, this chapter shall not apply to the offering of any timeshare plan under which the prospective purchaser's total financial obligation will be $3,000 or less during the entire term of the plan.

(7) Every escrow agent or trustee required under this chapter, or under chapter 192 as it relates to timeshare plans, must be independent.

(8) With respect to any personal property timeshare plan:

(a) This chapter applies only to personal property timeshare plans that are offered in this state.

(b) The division shall have the authority to adopt rules interpreting and implementing the provisions of this chapter as they apply to any personal property timeshare plan or any accommodation or facility that is part of a personal property timeshare plan offered in this state, or as the provisions of this chapter apply to any other laws of this state, of the several states, of the United States, or of any other jurisdiction, with respect to any personal property timeshare plan or any accommodation or facility that is part of a personal property timeshare plan offered in this state.

(c) Any developer and any managing entity of a personal property timeshare plan must submit to personal jurisdiction in this state in a form satisfactory to the division at the time of filing a public offering statement.

(9) Notwithstanding the provisions of any other law, s. 687.03 shall govern with respect to the rate of interest permitted for any loan, advance of money, line of credit, forbearance to enforce the collection of any sum of money, or other obligation in connection with a timeshare license.

(10) A developer or seller may not offer any number of timeshare interests that would cause the total number of timeshare interests offered to exceed a one-to-one use right to use night requirement ratio.

(11) (a) A seller may offer timeshare interests in a real property timeshare plan located outside of this state without filing a public offering statement for such out-of-state real property timeshare plan pursuant to s. 721.07 or s. 721.55, provided all of the following criteria have been satisfied:

1. The seller shall provide a disclosure statement to each prospective purchaser of such out- of-state timeshare plan. The disclosure statement for a single-site timeshare plan shall contain information otherwise required under s. 721.07(5)(e)-(cc) and the exhibits required by s. 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20. The disclosure statement for a multisite timeshare plan shall contain information otherwise required under s. 721.55(4) and (5) and the exhibits required under s. 721.55(7). If a developer has, in good faith, attempted to comply with the requirements of this subsection and if the developer has substantially complied with the disclosure requirements of this subsection, nonmaterial errors or omissions shall not be actionable. With respect to any offer for an out-of-state timeshare plan made pursuant to this subsection, the delivery by the seller to a prospective purchaser of the disclosure statement required by this subparagraph shall be deemed to satisfy any requirement of this chapter regarding a public offering statement.

2. The seller shall utilize and furnish to each purchaser of an out-of-state timeshare plan offered under this subsection a fully completed and executed copy of a purchase contract that contains the statement set forth in s. 721.065(2)(c) in conspicuous type located immediately prior to the space in the contract reserved for the purchaser’s signature. The purchase contract shall also contain the initial purchase price and any additional charges to which the purchaser may be subject in connection with the purchase of the timeshare plan, such as financing, or that will be collected from the purchaser on or before closing, such as the current year’s annual assessment for common expenses.

3. All purchase contracts for out-of-state timeshare plans offered under this subsection must also contain the following statements in conspicuous type:

This timeshare plan has not been reviewed or approved by the State of Florida. The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing.

4. a. An out-of-state timeshare plan may only be offered pursuant to this subsection by the seller on behalf of:

(I) The developer of a timeshare plan that has been approved by the division within the preceding 7 years pursuant to s. 721.07 or s. 721.55, or concerning which an amendment by the developer has been approved by the division within the preceding 7 years, which timeshare plan has been neither terminated nor withdrawn; or

(II) A developer under common ownership or control with a developer described in sub-sub-subparagraph (I), provided that any common ownership shall constitute at least a 50-percent ownership interest.

b. An out-of-state timeshare plan may only be offered pursuant to this subsection to a person who already owns a timeshare interest in a timeshare plan filed by a developer described in sub-subparagraph a.

5. Any seller of an out-of-state timeshare plan offered pursuant to this subsection shall be required to provide notice of such plan to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed $1,000 per filing.

(b) Timeshare plans offered pursuant to this subsection shall be exempt from the requirements of ss. 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58 in addition to the exemptions otherwise applicable to accommodations and facilities located outside of the state pursuant to subparagraph (1)(c)1.

(c) Any escrow account required to be established by s. 721.08 for any out-of- state timeshare plan offered under this subsection may be maintained in the situs jurisdiction provided the escrow agent submits to personal jurisdiction in this state in a form satisfactory to the division.

## 721.04 Saving clause.

All timeshare plans filed pursuant to chapter 2-23, Florida Administrative Code, prior to July 1, 1981, shall be deemed to be in compliance with the filing requirements of chapter 81-172, Laws of Florida.

## 721.05 Definitions.

As used in this chapter, the term:

(1) “Accommodation" means any apartment condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section.

(2) “Agreement for deed" means any written contract utilized in the sale of timeshare estates which provides that legal title will not be conveyed to the purchaser until the contract price has been paid in full and the terms of payment of which extend for a period in excess of 180 days after either the date of execution of the contract or completion of construction, whichever occurs later.

(3) “Agreement for transfer” means any written contract utilized in the sale of personal property timeshare interests which provides that legal title will not be transferred to the purchaser until the contract price has been paid in full and the terms of payment of which extend for a period in excess of 180 days after either the date of execution of the contract or completion of construction, whichever occurs later.

(4) “Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

(5) “Closing" means:

(a) For any plan selling timeshare estates, conveyance of the legal or beneficial title to a timeshare estate as evidenced by the delivery of a deed for conveyance of legal title, or other instrument for conveyance of beneficial title, to the purchaser or to the clerk of the court for recording or conveyance of the equitable title to a timeshare estate as

evidenced by the irretrievable delivery of an agreement for deed to the clerk of the court for recording.

(b) For any plan selling timeshare licenses or personal property timeshare interests, the final execution and delivery by all parties of the last document necessary for vesting in the purchaser the full rights available under the plan.

(6) “Common expenses" means:

(a) Those expenses, fees, or taxes properly incurred for the maintenance, operation, and repair of the accommodations or facilities, or both, constituting the timeshare plan.

(b) Any other expenses, fees, or taxes designated as common expenses in a timeshare instrument.

(c) Any past due and uncollected ad valorem taxes assessed against a timeshare development pursuant to s. 192.037.

(7) “Completion of construction" means:

(a) 1. That a certificate of occupancy has been issued for the entire building in which the timeshare unit being sold is located, or for the improvement, or that the equivalent authorization has been issued, by the governmental body having jurisdiction;

2. In a jurisdiction in which no certificate of occupancy or equivalent authorization is issued, that the construction, finishing, and equipping of the building or improvements according to the plans and specifications have been substantially completed; or

3. With respect to personal property timeshare plans, that all accommodations have been manufactured or built and acquired or leased by the developer, owners’ association, managing entity, trustee, or other person for the use of purchasers as set forth in the timeshare instrument; and

(b) That all accommodations and facilities of the timeshare plan are available for use in a manner identical in all material respects to the manner portrayed by the promotional material, advertising, and filed public offering statements.

(8) “Conspicuous type" means:

(a) Type in upper and lower case letters two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type; or

(b) Where the use of 10-point type would be impractical or impossible with respect to a particular piece of written advertising material, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances.

Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be utilized in contracts for purchase or public offering statements only where required by law or as authorized by the division.

(9) “Contract" means any agreement conferring the rights and obligations of a timeshare plan on the purchaser.

(10) “Developer" includes:

(a) 1. A “creating developer," which means any person who creates the timeshare plan;

2. A “successor developer," which means any person who succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and

3. A “concurrent developer," which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

(b) The term “developer" does not include:

1. An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption exists that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

2. A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065; or

3. A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

4. A person who acquires or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by a developer in the ordinary course of business on its own behalf or on behalf of such person.

(c) A successor or concurrent developer is exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7) This exemption does not apply to any of the successor or concurrent developer’s responsibilities, duties, or liabilities with respect to the timeshare plan which accrue after the date the successor or concurrent developer became a successor or concurrent developer, and such transfer does not constitute a fraudulent transfer. A transfer by a predecessor developer to a successor or concurrent developer shall be deemed fraudulent if the predecessor developer made the transfer:

1. With actual intent to hinder, delay, or defraud any purchaser or the division; or

2. To a person that would constitute an insider under s. 726.102(7).

This paragraph does not relieve any successor or concurrent developer from the obligation to comply with the provisions of any applicable timeshare instrument.

(11) “Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(12) “Enrolled" means paid membership in an exchange program or membership in an exchange program evidenced by written acceptance or confirmation of membership.

(13) “Escrow account" means an account established solely for the purposes set forth in this chapter with a financial institution located within this state.

(14) “Escrow agent" includes only:

(a) A savings and loan association, bank, trust company, or other financial institution, any of which must be located in this state and any of which must have a net worth in excess of $5 million;

(b) An attorney who is a member of The Florida Bar or his or her law firm,;

(c) A real estate broker who is licensed pursuant to chapter 475 or his or her brokerage firm,; or

(d) A title insurance agent that is licensed pursuant to s. 626.8417 a title insurance agency that is licensed pursuant to s. 626.8418, or a title insurer authorized to transact business in this state pursuant to s. 624.401.

(15) “Exchange company" means any person owning or operating, or owning and operating, an exchange program.

(16) “Exchange program" means any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers. The term does not include the assignment of the right to use and occupy accommodations and facilities to purchasers pursuant to a particular multisite timeshare plan's reservation system. Any method, arrangement, or procedure that otherwise meets this definition, wherein the purchaser's total contractual financial obligation exceeds $3,000 per any individual, recurring timeshare period, shall be regulated as a multisite timeshare plan in accordance with part II.

(17) “Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section.

(18) “Filed public offering statement” means a public offering statement that has been filed with the division pursuant to s. 721.07(5) or s. 721.55.

(19) “Incidental benefit" means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10; which is not an exchange program as defined in subsection (16); and which complies with the provisions of s. 721.075. The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

(20) “Independent," for purposes of determining eligibility of escrow agents and trustees pursuant to s. 721.03(7), means that:

(a) The escrow agent or trustee is not a relative, as described in s. 112.3135(1)(d), or an employee of the developer, seller, or managing entity, or of any officer, director, affiliate, or subsidiary thereof.

(b) There is no financial relationship, other than the payment of fiduciary fees or as otherwise provided in this subsection, between the escrow agent or trustee and the developer, seller, or managing entity, or any officer, director, affiliate, or subsidiary thereof.

(c) Compensation paid by the developer to an escrow agent or trustee for services rendered shall not be paid from funds in the escrow or trust account unless and until the developer is otherwise entitled to receive the disbursement of such funds from the escrow or trust account pursuant to this chapter.

(d) A person shall not be disqualified to serve as an escrow agent or a trustee solely because of the following:

1. A nonemployee, attorney-client relationship exists between the developer and the escrow agent or trustee;

2. The escrow agent or trustee provides brokerage services as defined by chapter 475 for the developer;

3. The escrow agent or trustee provides the developer with routine banking services which do not include construction or receivables financing or any other lending activities; or

4. The escrow agent or trustee performs closings for the developer or seller or issues owner's or lender's title insurance commitments or policies in connection with such closings.

(21) (a) “Interestholder" means a developer, an owner of the underlying fee or owner of the underlying personal property, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the accommodations or facilities of the timeshare plan.

(b) With respect to a multisite timeshare plan governed by part II which contains a component site that is also part of a single-site timeshare plan or condominium or other property regime, the term, except as to any timeshare interest, timeshare unit, or other unit that is specifically subject to, or otherwise dedicated to, the multisite timeshare plan, does not include a developer; an owner of the underlying fee or owner of the underlying personal property; a mortgagee, judgment creditor, or other lienor; or any other person having an interest in or lien or encumbrance against a timeshare interest in such single-site timeshare plan, or an interest in or lien or encumbrance against a timeshare unit or other unit in such condominium or property regime. This paragraph is intended only as a clarification of existing law.

(22) “Managing entity" means the person who operates or maintains the timeshare plan pursuant to s. 721.13(1).[**(See also: 468.438, F.S.)**](#_468.4338_Reactivation;_continuing)

(23) “Memorandum of agreement" means a written document, in a form sufficient to permit the document to be recorded or otherwise filed in the appropriate public records and to provide constructive notice of its contents under applicable law, which includes the names of the seller and the purchasers, a legal description of the timeshare property or other sufficient description for a personal property timeshare plan, and all timeshare interests to be included in such document, and a description of the type of timeshare interest sold by the seller.

(24) “Offer to sell," “offer for sale," “offered for sale," or “offer" means the solicitation, advertisement, or inducement, or any other method or attempt, to encourage any person to acquire the opportunity to participate in a timeshare plan.

(25) “One-to-one use right to use night requirement ratio" that the sum of the nights that owners are entitled to use in a given 12-month period shall not exceed the number of nights available for use by those owners during the same 12-month period. No individual timeshare unit may be counted as providing more than 365 use nights per 12-month period or more than 366 use nights per 12-month period that includes February 29. The use rights of each owner shall be counted without regard to whether the owner’s use rights have been suspended for failure to pay assessments or otherwise.

(26) “Owner of the underlying fee" or “owner of the underlying personal property” means any person having an interest in the real property or personal property comprising or underlying the accommodations or facilities of a timeshare plan at or subsequent to the time of creation of the timeshare plan.

(27) “Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and purchasers of such timeshare plan.

(28) “Personal property timeshare interest” means a right to occupy an accommodation located on or in or comprised of personal property that is not permanently affixed to real property, whether or not coupled with a beneficial or ownership interest in the accommodations or personal property.

(29) “Public offering statement” means the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551. The term “public offering statement” shall refer to both a filed public offering statement and a purchaser public offering statement.

(30) “Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare plan other than as security for an obligation.

(31) “Purchaser public offering statement” means that portion of the filed public offering statement which must be delivered to purchasers pursuant to s. 721.07(6) or s. 721.551.

(32) “Regulated short-term product" means a contractual right, offered by the seller, to use accommodations of a timeshare plan or other accommodations, provided that:

(a) The agreement to purchase the short-term right to use is executed in this state on the same day that the prospective purchaser receives an offer to acquire an interest in a timeshare plan and does not execute a purchase contract, after attending a sales presentation; and

(b) The acquisition of the right to use includes an agreement that all or a portion of the consideration paid by the prospective purchaser for the right to use will be applied to or credited against the price of a future purchase of a timeshare interest, or that the cost of a future purchase of a timeshare interest will be fixed or locked in at a specified price.

(33) “Seller" means any developer or any other person, or any agent or employee thereof, who offers timeshare interests in the ordinary course of business. The term “seller" does not include:

(a) An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

(b) A managing entity, not otherwise a seller, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

(c) A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

(d) A person who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement and who subsequently arranges for all or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business on their own behalves or on behalf of such person.

(34) “Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof, or coupled with. an ownership interest in a condominium unit pursuant to s. 718.103, an ownership interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect beneficial interest in a trust that complies in all respects s. 721.08(2)(c) 4, or s. 721.53(1)(e), provided that the trust does not contain any personal property timeshare interests. A Timeshare estate is a parcel of real property under the laws of this state.

(35) “Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

(36) “Timeshare interest” means a timeshare estate, a personal property timeshare interest, or a timeshare license.

(37) “Timeshare license" means a right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.

(38) “Timeshare period" means the period or periods of time when a purchaser of a timeshare interest is afforded the opportunity to use the accommodations of a timeshare plan.

(39) “Timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term “timeshare plan” includes:

(a) A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and

(b) A “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

(40) “Timeshare property" means one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those timeshare units. Notwithstanding anything to the contrary contained in chapter 718 or chapter 719, the timeshare instrument for a timeshare condominium or cooperative may designate personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, as common elements or limited common elements of the timeshare condominium or cooperative.

(41) “Timeshare unit" means an accommodation of a timeshare plan which is divided into timeshare periods. Any timeshare unit in which a door or doors connecting two or more separate rooms are capable of being locked to create two or more private dwellings shall only constitute one timeshare unit for purposes of this chapter, unless the timeshare instrument provides that timeshare interests may be separately conveyed in such locked-off portions.

(42) “Lead dealer” means any person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or more owners of timeshare interests. In the event a lead dealer is not a natural person, the term shall also include the

natural person providing personal contact information to a resale service provider or other person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the extent they provide others with personal contact information about owners of timeshare interests in their own timeshare plans or members of their own exchange programs. The term does not include persons providing personal contact information that is not designed specifically or primarily to identify owners of timeshare interests even though the information provided may include five or more owners of timeshare interests.

(43) “Personal contact information” means any information that can be used to contact the owner of a specific timeshare interest, including, but not limited to, the owner’s name, address, telephone number, and e-mail address.

(44) “Resale service provider” means any resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses telemarketing, direct mail, e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer timeshare resellers. The term does not include developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance; or a consumer timeshare reseller who acquires a timeshare interest or timeshare interests for his or her own use and occupancy and who later offers the timeshare interest or timeshare interests for rent or offers for resale in a given calendar year seven or fewer of the timeshare interests that he or she acquired for his or her own use and occupancy.

(45) “Consumer resale timeshare interest” means:

(a) A timeshare interest owned by a purchaser;

(b) One or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or

(c) One or more reserved occupancy rights relating to, or arranged through, an exchange program in which a purchaser is a member.

(46) “Consumer timeshare reseller” means a purchaser who acquires a timeshare interest for his or her own use and occupancy and later offers the timeshare interest for resale or rental.

(47) “Resale broker” means any person, or any agent or employee of such person, who is licensed pursuant to chapter 475 and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

(48) “Resale brokerage services” means, with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, any activity that directly or indirectly consists of any of the activities described in s. 475.01(1)(a).

(49) “Resale advertiser” means any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshare interests in their own timeshare plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

(50) “Resale advertising service” means any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale timeshare interest located or offered within this state, including any offer to advertise or promote the sale or purchase of any such interest.

(51) “Resale transfer agreement” means a contract or other agreement between a person offering timeshare interest transfer services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in s. 721.17(3).

(52) “Timeshare interest transfer services” means any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in s. 721.17(3). The term does not include resale advertising services as provided in this chapter.

## 721.056 Supervisory duties of developer.

Notwithstanding obligations placed upon any other persons by this chapter, it is the duty of the developer to supervise, manage, and control all aspects of the offering of a timeshare plan, including, but not limited to, promotion, advertising, contracting, and closing. Any violation of this section which occurs during such offering activities shall be deemed to be a violation by the developer as well as by the person actually committing such violation.

## 721.06 Contracts for purchase of timeshare interests.

(1) Each seller shall utilize, and furnish each purchaser a fully completed and executed copy of, a contract pertaining to the sale, which contract shall include the following information:

(a) The actual date the contract is executed by each party.

(b) The names and addresses of the developer, and the timeshare plan.

(c) The initial purchase price and any additional charges to which the purchaser may be subject in connection with the purchase of the timeshare interest, such as financing, or which will be collected from the purchaser on or before closing, such as the current year’s annual assessment for common expenses.

(d) 1. For real property timeshare plans, an estimate of any anticipated annual assessment stated on an annually recurring basis for any use charges, fees, common expenses, or ad valorem taxes or, if an estimate is unavailable, the current year’s actual annual assessment for any use charges, fees, common expenses, or ad valorem taxes.

2. For personal property timeshare plans, an estimate of any anticipated annual assessment stated on an annually recurring basis for any use charges, fees, common expenses, or taxes or, if an estimate is unavailable, the current year’s actual annual assessment for any use charges, fees, common expenses, or taxes.

(e) The estimated date of completion of construction of each accommodation or facility promised to be completed which is not completed at the time the contract is executed and the estimated date of closing.

(f) A brief description of the nature and duration of the timeshare interest being sold, including whether any interest in real property or personal property is being conveyed and the specific number of years constituting the term of the timeshare plan.

(g) Immediately prior to the space reserved in the contract for the signature of the purchaser, in conspicuous type, substantially the following statements:

1. If the purchaser will receive a personal property timeshare interest: This personal property timeshare plan is governed only by limited sections of the timeshare management provisions of Florida law.

2. If the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., the disclosure required by s. 721.08(2)(c)3.e.(IV).

3. You may cancel this contract without any penalty or obligation within 10 calendar days after the date you sign this contract or the date on which you receive the last of all documents required to be given to you pursuant to section 721.07(6), Florida Statutes, whichever is later. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (Name of Seller) at (Address of Seller). Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

(h) If a timeshare estate is being conveyed, the following statement in conspicuous type:

For the purpose of ad valorem assessment, taxation and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to section 192.037, Florida Statutes.

(i) A statement that, in the event the purchaser cancels the contract during a 10-day cancellation period, the developer will refund to the purchaser the total amount of all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation. The statement shall further provide that the refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later. A seller and a purchaser shall agree in writing on a specific value for each contract benefit received by the purchaser for purposes of this paragraph. The term “contract benefit" shall not include purchaser public offering statements or other documentation or materials that must be furnished to a purchaser pursuant to statute or rule.

(j) If the timeshare interest is being sold pursuant to an agreement for deed or an agreement for transfer, a statement that the signing of the agreement for deed or agreement for transfer does not entitle the purchaser to receive the conveyance or transfer of his or her timeshare estate or personal property timeshare interest until all payments under the agreement have been made.

(k) Unless the developer is, at the time of offering the plan, the owner of the accommodations and facilities of the timeshare plan, free and clear of all liens, encumbrances, and claims of other interestholders, a statement that the developer is not the sole owner of the underlying fee or owner of the underlying personal property or that the accommodations or facilities are subject to liens or encumbrances, which statement shall include:

1. The names and addresses of all other interestholders; and

2. The actual interest of the developer in the accommodations or facilities. As an alternative to including the statement in the purchase contract, a seller may include a reference in the purchase contract to the location in the purchaser public offering statement text of such information.

(l) If the purchaser will receive an interest in a multisite timeshare plan pursuant to part II, a statement shall be provided in conspicuous type in substantially the following form:

The developer is required to provide the managing entity of the multisite timeshare plan with a copy of the approved public offering statement text and exhibits filed with the division and any approved amendments thereto, and any other component site documents as described in section 721.07 or section 721.55, Florida Statutes, that are not required to be filed with the division, to be maintained by the managing entity for inspection as part of the books and records of the plan.

(m) The following statement in conspicuous type:

Any resale of this timeshare interest must be accompanied by certain disclosures in accordance with section 721.065, Florida Statutes.

(n) A description of any rights reserved by the developer to alter or modify the offering prior to closing.

(2) (a) An agreement for deed shall be recorded by the developer within 30 days after the day it is executed by the purchaser. The developer shall pay all recording costs associated therewith. A form copy of such instrument must be filed with the division for review pursuant to s. 721.07.

(b) An agreement for transfer shall be filed with the appropriate official responsible for maintaining such records in the appropriate jurisdiction within 30 days after the day it is executed by the purchaser. The developer shall pay all filing costs associated therewith. A form copy of such instrument must be filed with the division for review pursuant to s. 721.07.

(3) The escrow agent shall provide the developer with a receipt for all purchaser funds or other property received by the escrow agent from a seller.

## 721.065 Resale purchase agreements.

(1) An owner who acquires a timeshare interest for her or his own use and occupancy and later offers it for resale, or any agent of such person, must utilize a resale purchase agreement which complies with the provisions of subsection (2) to effectuate any resale

of the timeshare interest. A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, 50 or fewer timeshare interests in the timeshare plan which it manages in a given calendar year to persons who are not existing purchasers of that timeshare plan may also use a resale purchase agreement which complies with subsection (2) in lieu of complying with the provisions of ss. 721.06-721.12 and 721.20. A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, timeshare interests in the timeshare plan which it manages to persons who are existing purchasers of that timeshare plan may also use a resale purchase agreement in compliance with subsection (2) in lieu of complying with the provisions of ss. 721.06-721.12 and 721.20. For purposes of this subsection, a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for her or his own use and occupancy.

(2) Any resale purchase agreement utilized by a person described in subsection (1) must contain all of the following:

(a) The name and address of the timeshare plan and of the managing entity of the timeshare plan.

(b) One of the following statements in conspicuous type located immediately prior to the disclosure required by paragraph (c):

1. If the resale purchase agreement pertains to a real property timeshare plan:

The current year's assessment for common expenses allocable to the timeshare interest you are purchasing is $\_\_\_\_\_\_. This assessment, which may be increased from time to time by the managing entity of the timeshare plan, is payable in full each year on or before \_\_\_\_\_\_\_\_\_\_\_\_. This assessment (includes/does not include) yearly ad valorem real estate taxes, which (are/are not) billed and collected separately. (If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be included: The most recent annual assessment for ad valorem real estate taxes for the timeshare interest you are purchasing is $\_\_\_\_\_\_.) (If there are any delinquent assessments for common expenses or ad valorem taxes outstanding with respect to the timeshare interest in question, the following statement must be included: A delinquency in the amount of $ \_\_\_\_\_\_ for unpaid common expenses or ad valorem taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of $ \_\_\_\_\_\_\_ for interest and late charges.) For the purpose of ad valorem assessment, taxation, and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to section 192.037, Florida Statutes. Each owner is personally liable for the payment of her or his assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and/or ownership rights. There are many important documents relating to the timeshare plan which you should review prior to purchasing a timeshare interest, including the declaration of condominium or covenants and restrictions; the owners’association articles and bylaws; the current year's operating and reserve budgets; and any rules and regulations affecting the use of timeshare plan accommodations and facilities.

2. If the resale purchase agreement pertains to a personal property timeshare plan:

The current year’s assessment for any common expenses, use charges, fees, or taxes allocable to the timeshare interest you are purchasing is $.\_\_\_\_\_\_\_ This assessment, which may be increased from time to time by the managing entity of the timeshare plan, is payable in full each year on or before .\_\_\_\_\_\_\_ (If there are any delinquent assessments for common expenses, use charges, fees, or taxes outstanding with respect to the timeshare interest in question, the following statement must be included: A delinquency in the amount of $.\_\_\_\_\_\_\_ for unpaid common expenses, use charges, fees, or taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of $.\_\_\_\_\_\_\_ for interest and late charges.) Each owner is personally liable for the payment of her or his assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and/or ownership rights. There are many important documents relating to the timeshare plan which you should review prior to purchasing a timeshare interest, including any owners’ association articles and bylaws; the current year’s operating and reserve budgets; and any rules and regulations affecting the use of timeshare plan accommodations and facilities.

(c) The following statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser:

You may cancel this contract without any penalty or obligation within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the seller at (address) . Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

(d) The year in which the purchaser will first be entitled to occupancy of a timeshare period associated with the timeshare interest that is the subject of the resale purchase agreement.

(3) If a resale purchase agreement utilized by a person described in subsection (1) does not comply with the provisions of subsection (2), the contract shall be voidable at the option of the purchaser for a period of 1 year after the date of closing.

## 721.07 Public offering statement.

Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(1) The division shall, upon receiving a filed public offering statement from a developer, mail to the developer an acknowledgment of receipt. The failure of the division to send such acknowledgment will not, however, relieve the developer from the duty of complying with this section.

(2) (a) Within 45 days after receipt of a filed public offering statement which is subject only to this part and is submitted in proper form as prescribed by rule, or within 120 days after receipt of a filed public offering statement which is subject to part II and is submitted in proper form as prescribed by rule, the division shall determine whether the proposed filed public offering statement is adequate to meet the requirements of this section and shall notify the developer by mail that the division has either approved the statement or found specified deficiencies in the statement. If the division fails to approve the statement or specify deficiencies in the statement within the period specified in this paragraph, the filing will be deemed approved.

(b) If the developer fails to respond to any cited deficiencies within 20 days after receipt of the division's deficiency notice, the division may reject the filing. Subsequent to such rejection, a new filing fee pursuant to subsection (4) and a new division initial review period pursuant to paragraph (a) shall apply to any refiling or further review of the rejected filing.

(c) Within 20 days after receipt of the developer's timely and complete response to any deficiency notice, the division shall notify the developer by mail that the division has either approved the filing, found additional specified deficiencies in it, or determined that any previously specified deficiency has not been corrected. If the division fails to approve or specify additional deficiencies within 20 days after receipt of the developer's timely and complete response, the filing will be deemed approved.

(d) A developer shall have the authority to deliver to purchasers any purchaser public offering statement that is not yet approved by the division, provided that the following shall apply:

1. At the time the developer delivers an unapproved purchaser public offering statement to a purchaser pursuant to this paragraph, the developer shall deliver a fully completed and executed copy of the purchase contract required by s. 721.06 that contains the following statement in conspicuous type in substantially the following form which shall replace the statements required by s. 721.06(1)(g):

The developer is delivering to you a public offering statement that has been filed with but not yet approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Any revisions to the unapproved public offering statement you have received must be delivered to you, but only if the revisions materially alter or modify the offering in a manner adverse to you. After the division approves the public offering statement, you will receive notice of the approval from the developer and the required revisions, if any.

Your statutory right to cancel this transaction without any penalty or obligation expires 10 calendar days after the date you signed your purchase contract or the date on which you receive the last of all documents required to be given to you pursuant to section 721.07(6), Florida Statutes, or 10 calendar days after you receive revisions required to be delivered to you, if any, whichever is later. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (Name of Seller) at (Address of Seller). Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

2. After receipt of approval from the division and prior to closing, if any revisions made to the documents contained in the purchaser public offering statement materially alter or modify the offering in a manner adverse to a purchaser, the developer shall send the purchaser such revisions together with a notice containing a statement in conspicuous type in substantially the following form:

The unapproved public offering statement previously delivered to you, together with the enclosed revisions, has been approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Accordingly, your cancellation right expires 10 calendar days after you sign your purchase contract or 10 calendar days after you receive these revisions, whichever is later. If you have any questions regarding your cancellation rights, you may contact the division at (insert division’s current address).

3. After receipt of approval from the division and prior to closing, if no revisions have been made to the documents contained in the unapproved purchaser public offering statement, or if such revisions do not materially alter or modify the offering in a manner adverse to a purchaser, the developer shall send the purchaser a notice containing a statement in conspicuous type in substantially the following form:

The unapproved public offering statement previously delivered to you has been approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Revisions made to the unapproved public offering statement, if any, are not required to be delivered to you or are not deemed by the developer, in its opinion, to materially alter or modify the offering in a manner that is adverse to you. Accordingly, your cancellation right expired 10 days after you signed your purchase contract. A complete copy of the approved public offering statement is available through the managing entity for inspection as part of the books and records of the plan. If you have any questions regarding your cancellation rights, you may contact the division at (insert division’s current address).

(3) (a) 1. Any change to an approved public offering statement filing shall be filed with the division for approval as an amendment prior to becoming effective. The division shall have 20 days after receipt of a proposed amendment to approve or cite deficiencies in the proposed amendment. If the division fails to act within 20 days, the amendment will be deemed approved. If the proposed amendment adds a new component site to an approved multisite timeshare plan, the division's initial period in which to approve or cite deficiencies is 45 days. If the developer fails to adequately respond to any deficiency notice within 30 days, the division may reject the amendment. Subsequent to such rejection, a new filing fee pursuant to subsection (4) and a new division initial review period pursuant to this paragraph shall apply to any refiling or further review of the rejected amendment.

2. For filings only subject to this part, each approved amendment to the approved purchaser public offering statement, other than an amendment made only for the purpose of the addition of a phase or phases to the timeshare plan in the manner described in the timeshare instrument or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, shall be delivered to a purchaser no later than 10 days prior to closing. For filings made under part II, each approved amendment to the multisite timeshare plan purchaser public offering statement, other than an amendment made only for the purpose of the addition, substitution, or deletion of a component site pursuant to part II or the addition of a phase or phases to a component site of a multisite timeshare plan in the manner described in the timeshare instrument or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, shall be delivered to a purchaser no later than 10 days prior to closing.

3. For filings subject only to part II of this chapter, amendments made to a timeshare instrument for a component site located in this state are required only to be delivered to purchasers who receive an interest in a specific multisite timeshare plan in that component site. Amendments made to a timeshare instrument for a component site not located in this state are not required to be delivered to purchasers.

(b) At the time that any amendments required to be delivered to purchasers, as provided in paragraph (a), are delivered to purchasers, the developer shall provide to those purchasers who have not closed a written statement that the purchaser or lessee will have a 10-day voidability period.

(4) (a) Upon the filing of a filed public offering statement, the developer shall pay a filing fee of $2 for each 7 days of annual use availability in each timeshare unit that may be offered as a part of the proposed timeshare plan pursuant to the filing.

(b) Upon the filing of an amendment to an approved filed public offering statement, the developer shall pay a filing fee of $100.

(5) Every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

(a) A cover page stating only:

1. The name of the timeshare plan; and

2. The following statement, in conspicuous type: This public offering statement contains important matters to be considered in acquiring a timeshare interest. The statements contained in this public offering statement are only summary in nature. A prospective purchaser should refer to all references, accompanying exhibits, contract documents, and sales materials. You should not rely upon oral representations as being correct. Refer to this document and accompanying exhibits for correct representations. The seller is prohibited from making any representations other than those contained in the contract and this public offering statement.

(b) A listing of all statements required to be in conspicuous type in the public offering statement and in all exhibits thereto.

(c) A separate index of the contents and exhibits of the public offering statement.

(d) A text, which shall include, where applicable, the disclosures set forth in paragraphs (e)-(hh).

(e) A description of the timeshare plan, including, but not limited to:

1. Its name and location.

2. An explanation of the form of timeshare ownership that is being offered, including a statement as to whether any interest in the underlying real property will be conveyed to the purchaser. If the plan is being created or being sold on a leasehold, a description of the material terms of the lease shall be included. If the plan is a plan in which timeshare estates or personal property timeshare interests are sold as interests in a trust pursuant to the requirements of this chapter, a full and accurate description of the trust arrangement and the trustee’s duties shall be included. If the plan is a personal property timeshare plan, a description of the material terms of the arrangement for the ownership or use of the personal property shall be included.

3. An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

4. If ownership or use of the timeshare plan is based on a point system, a statement indicating the circumstances by which the point values may change, the extent of such changes, and the person or entity responsible for the changes.

5. If any of the accommodations or facilities are part of a personal property timeshare plan in which the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., the disclosure required by s. 721.08(2)(c)3.e.(IV).

(f) A description of the accommodations, including, but not limited to:

1. The number of timeshare units in each building, the total number of timeshare periods declared as part of the timeshare plan and filed with the division, and the number of bathrooms and bedrooms in each type of timeshare unit.

2. The latest date estimated for completion of constructing, finishing, and equipping the timeshare units declared as part of the timeshare plan and filed with the division.

3. The estimated maximum number of units and timeshare periods that will use the accommodations and facilities. If the maximum number of timeshare units or timeshare periods will vary, a description of the basis for variation.

4. The duration, in years, of the timeshare plan.

5. If any of the accommodations are part of a personal property timeshare plan, the name, vehicle registration number, title certificate number, or any other identifying registration number assigned to the accommodation of a personal property timeshare plan by a state, federal, or international governmental agency.

6. If any of the accommodations are part of a personal property timeshare plan, the fire detection system and fire safety equipment and description of method of compliance with any applicable firesafety or fire detection regulations.

(g) A description of any facilities that will be used by purchasers of the plan, including, but not limited to:

1. The intended purpose, if not apparent from the description.

2. The estimated date when each facility will be available for use by the purchaser.

3. A statement as to whether the facilities will be used exclusively by purchasers of the timeshare plan, and, if not, a statement as to whether the purchasers of the timeshare plan are required to pay any portion of the maintenance and expenses of such facilities.

(h) 1. If any facilities offered by the developer for use by purchasers are to be leased or have club memberships associated with them, other than participation in a vacation club, one of the following statements in conspicuous type: There is a lease associated with one or more facilities of the timeshare plan; or, There is a club membership associated with one or more facilities of the timeshare plan.

2. If it is mandatory that purchasers pay fees, rent, dues, or other charges under a facilities lease or club membership for the use of the facilities, other than participation in a vacation club, the applicable statement in conspicuous type in substantially the following form:

a. Membership in a facilities club is mandatory for purchasers;

b. Purchasers or the owners’ association(s) are required, as a condition of ownership, to be lessees under the facilities lease;

c. Purchasers or the owners’ association(s) are required to pay their share of the rent or costs and expenses of maintenance, management, upkeep, and replacement under the facilities lease (or the other instruments providing the facilities); or

d. A similar statement of the nature of the organization or the manner in which the use rights are created, and that purchasers are required to pay. Immediately following the applicable statement, a description of the lease or other instrument shall be stated, including a description of terms of the payment of rent or costs and expenses of maintenance, management, upkeep, and replacement of the facilities.

3. If the purchasers are required to pay a use fee, or other payment for the use of the facilities, not including the rent or maintenance, management, upkeep, or replacement costs and expenses, the following statement in conspicuous type: The purchasers or the owners’ association(s) must pay use fees for one or more facilities. Immediately following this statement a description of the use fees shall be included.

4. If any person other than the owners’ association has the right to a lien on the timeshare interests to secure the payment of assessments, rent, or other exactions, a statement in conspicuous type in substantially the following form:

a. There is a lien or lien right against each timeshare interest to secure the payment of rent and other exactions under the facilities lease. A purchaser's failure to make these payments may result in foreclosure of the lien; or

b. There is a lien or lien right against each timeshare interest to secure the payment of assessments or other exactions coming due for the use, maintenance, upkeep, or repair of one or more facilities. A purchaser's failure to make these payments may result in foreclosure of the lien. Immediately following the applicable statement, a description of the lien right shall be included.

(i) If the developer or any other person has the right to increase or add to the facilities at any time after the establishment of the timeshare plan, without the consent of the purchasers or owners’ association being required, a statement in conspicuous type in substantially the following form: Facilities may be expanded or added without consent of the purchasers or the owners’ association(s). Immediately following this statement, a description of such reserved rights shall be included.

(j) 1. For a real property timeshare plan, an explanation of the status of the title to the real property underlying the timeshare plan, including a statement of the existence of any lien, defect, judgment, mortgage, or other encumbrance affecting the title to the property, and how such lien, defect, judgment, mortgage, or other encumbrance will be removed or satisfied prior to closing.

2. For a personal property timeshare plan, an explanation of the status of title to the personal property underlying the timeshare plan, including a statement of the existence of any lien, defect, judgment, or other encumbrance affecting the title to the personal property, and how such lien, defect, judgment, or other encumbrance will be removed or satisfied prior to closing.

(k) A description of any judgment against the developer, the managing entity, the owner of the underlying fee, or the owner of the underlying personal property, which judgment is material to the timeshare plan; the status of any pending suit to which the developer, the managing entity, the owner of the underlying fee, or the owner of the underlying personal property is a party, which suit is material to the timeshare plan; and any other suit which is material to the timeshare plan of which the

developer, managing entity, the owner of the underlying fee, or the owner of the underlying personal property has actual knowledge. If no judgments or pending suits exist, there shall be a statement of such fact.

(l) A description of all unusual and material circumstances, features, and characteristics of the real property or personal property underlying or comprising the timeshare plan.

(m) A detailed explanation of any financial arrangements which have been provided for completion of all promised improvements.

(n) The name and address of the managing entity; a statement whether the seller may change the managing entity or its control and, if so, the manner by which the seller may change the managing entity; a statement of the arrangements for management, maintenance, and operation of the accommodations and facilities and of other property that will serve the purchasers; and a description of the management arrangement and any contracts for these purposes having a term in excess of 1 year, including the names of the contracting parties, the term of the contract, the nature of the services included, and the compensation, stated for a month and for a year, and provisions for increases in the compensation. In the case of a personal property timeshare plan in which the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., a statement shall be included that describes the trustee’s or owners’ association’s access to the certificates of classification and that the certificate of classification will be made available to purchasers on request.

(o) If any person other than the purchasers has the right to retain control of the board of administration of the owners’ association, if any, for a period of time which may exceed 1 year after the closing of the sale of a majority of the timeshare interests in that timeshare plan to persons other than successors or concurrent developers and the plan is one in which all purchasers automatically become members of the owners’ association, a statement in conspicuous type in substantially the following form: The developer (or other person) has the right to retain control of the owners’ association after a majority of the timeshare interests have been sold. Immediately following this statement, a description of the applicable transfer of control provisions of the timeshare plan shall be included.

(p) 1. If there are any restrictions upon the sale, transfer, conveyance, or leasing of a timeshare interest, a statement in conspicuous type in substantially the following form: The sale, lease, or transfer of timeshare interests is restricted or controlled. Immediately following this statement, a description of the nature of the restriction, limitation, or control on the sale, lease, or transfer of timeshare interests shall be included.

2. The following statement in conspicuous type in substantially the following form: The purchase of a timeshare interest should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the timeshare interest may be resold.

(q) If the timeshare plan is part of a phase project, a statement to that effect and a complete description of the phasing. Notwithstanding any provisions of s. 718.110 or s. 719.1055, a developer may develop a timeshare condominium or a timeshare cooperative in phases if the original declaration of condominium or cooperative documents submitting the initial phase to condominium ownership or cooperative ownership or an amendment to the declaration of condominium or cooperative documents which has been approved by all of the unit owners and unit mortgagees provides for phasing. Notwithstanding any provisions of s. 718.403 or s. 719.403 to the contrary, the original declaration of condominium or cooperative documents, or an amendment to the declaration of condominium or cooperative documents adopted pursuant to this subsection, need only generally describe the developer's phasing plan and the land which may become part of the condominium or cooperative, and, in conjunction therewith, the developer may also reserve all rights to vary his or her phasing plan as to phase boundaries, plot plans and floor plans, timeshare unit types, timeshare unit sizes and timeshare unit type mixes, numbers of timeshare units, and facilities with respect to each subsequent phase. There shall be no time limit during which a developer of a timeshare condominium or timeshare cooperative must complete his or her phasing plan, and the developer shall not be required to notify owners of existing timeshare estates of his or her decision not to add one or more proposed phases.

(r) A description of the material restrictions, if any, to be imposed on timeshare interests concerning the use of any of the accommodations or facilities, including statements as to whether there are restrictions upon children and pets or a reference to a copy of the documents containing the restrictions which shall be attached as an exhibit. If there are no restrictions, there shall be a statement of such fact.

(s) If there is any land or personal property that is offered by the developer for use by the purchasers and which is neither owned by them nor leased to them, the owners’ association, or any entity controlled by the purchasers, a statement describing the land or personal property, how it will serve the timeshare plan, and the nature and term of service.

(t)[**(See also: Rule 61B-40.006)**](#_61B-40.006_Reserves.) An estimated operating budget for the timeshare plan and a schedule of the purchaser's expenses shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the timeshare plan collectible from purchasers by assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall also be shown for the shortest timeshare period offered for sale by the developer. If the timeshare plan provides for the offer and sale of units to be used on a nontimeshare basis, the estimated monthly and annual expenses of such units shall be set forth in a separate schedule.

2. The estimated weekly, monthly, and annual expenses of the purchaser of each timeshare interest, other than assessments payable to the managing entity. Expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the timeshare plan documents may be excluded from this estimate.

3. [**(See also: Rules 61B-40.004(1)(e)**](#_61B-40.004_Budgets.)The estimated items of expenses of the timeshare plan and the managing entity, except as excluded under subparagraph

2., including, but not limited to, if applicable, the following items, which shall be stated either as management expenses collectible by assessments or as expenses of the purchaser payable to persons other than the managing entity:

a. Expenses for the managing entity:

(I) Administration of the managing entity.

(II) Management fees.

(III) Maintenance.

(IV) Rent for facilities.

(V) Taxes upon timeshare property.

(VI) Taxes upon leased areas.

(VII) Insurance.

(VIII) Security provisions.

(IX) Other expenses.

(X) Operating capital.

(XI) Reserves for deferred maintenance and reserves for capital expenditures, including:

(A) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a real property timeshare plan, if any. All reserves for any accommodations and facilities of real property timeshare plans located in this state shall be calculated using a formula based upon estimated life and replacement cost of each reserve item that will provide funds equal to the total estimated deferred maintenance expense or total estimated life and replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves shall be based on either a separate analysis of each of the required assets using the straight-line accounting method or a pooled analysis of two or more of the required assets using the pooling accounting method.. Reserves for deferred maintenance for such accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of timeshare unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the overall structure. For any accommodations and facilities of real property timeshare plans located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance or capital expenditures required by the law of the situs state, if applicable, and maintained for such accommodations and facilities.

(B) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a personal property timeshare plan, if any. If such reserves are maintained, the estimated operating budget shall disclose the methodology of how the reserves are calculated. If a personal property timeshare plan does not require reserves, the following statement, in conspicuous type, shall appear in both the budget and the public offering statement:

The estimated operating budget for this personal property timeshare plan does not include reserves for deferred maintenance or capital expenditures; each timeshare interest may be subject to substantial special assessments from time to time because no such reserves exist.

(XII) Fees payable to the division.

b. Expenses for a purchaser:

(I) Rent for the timeshare unit, if subject to a lease.

(II) Rent payable by the purchaser directly to the lessor or agent under any lease for the use of facilities, which use and payment is a mandatory condition of ownership and is not included in the common expenses or assessments for common maintenance paid by the purchasers to the managing entity.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period before the time that purchasers elect a majority of the board of administration and the period after that date.

5. If the developer intends to guarantee the level of assessments, such guarantee must be based upon a good faith estimate of the revenues and expenses of the timeshare plan. The guarantee must include a description of the following:

a. The specific time period measured in one or more calendar or fiscal years during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the timeshare plan pursuant to s. 721.15(2) if the developer has excused himself or herself from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the budget. If the developer has reserved the right to extend or increase the guarantee level pursuant to s. 721.15(2), a disclosure must be included to that effect.

6. If the developer intends to provide a trust fund to defer or reduce the payment of annual assessments, a copy of the trust instrument shall be attached as an exhibit and shall include a description of such arrangement, including, but not limited to:

a. The specific amount of such trust funds and the source of the funds.

b. The name and address of the trustee.

c. The investment methods permitted by the trust agreement.

d. A statement in conspicuous type that the funds from the trust account may not cover all assessments and that there is no guarantee that purchasers will not have to pay assessments in the future.

7. The budget of a phase timeshare plan may contain a note identifying the number of timeshare interests covered by the budget, indicating the number of timeshare interests, if any, estimated to be declared as part of the timeshare plan during that calendar year, and projecting the common expenses for the timeshare plan based upon the number of timeshare interests estimated to be declared as part of the timeshare plan during that calendar year.

(u) For any timeshare plan for which the purchase or closing of timeshare interests is not subject to the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. s. 2601 et seq., a schedule of estimated closing expenses to be paid by a purchaser or lessee of a timeshare interest

(v) A statement as to whether a title opinion or title insurance policy is available to the purchaser and, if so, at whose expense.

(w) The identity of the developer and the chief operating officer or principal directing the creation and sale of the timeshare plan and a statement of the experience of each in this field or, if no experience, a statement of that fact.

(x) A statement of the total financial obligation of the purchaser, including the purchase price and any additional charges to which the purchaser may be subject.

(y) The name of any person who will or may have the right to alter, amend, or add to the charges to which the purchaser may be subject and the terms and conditions under which such alterations, amendments, or additions may be imposed.

(z) A statement of the purchaser's right of cancellation of the purchase contract.

(aa) A description of the insurance coverage provided for the timeshare plan.

(bb) A statement as to whether the timeshare plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program.

(cc) The existence of rules and regulations regarding any reservation features governing a purchaser’s ability to make reservations for a timeshare period, including, if applicable, a conspicuous type disclaimer in substantially the following form:

The right to reserve a timeshare period is subject to rules and regulations of the timeshare plan reservation system.

(dd) If a developer is filing a timeshare plan that includes a timeshare instrument or component site document that was in conformance with the laws and rules in existence at the time the timeshare plan was created but does not conform to existing laws and rules that govern the timeshare plan and the developer does not have the authority or power to amend or change the timeshare instrument or component site document to conform to such existing laws or rules as directed by the division, a brief explanation of current law and the conflict with the timeshare instrument or component site document, preceded by disclaimer in conspicuous type in substantially the following form:

Florida law has been amended and certain provisions in [insert appropriate reference to timeshare instrument or component site document] that were in conformance with Florida law as it existed at the time the timeshare plan was created are not in conformance with current Florida law. These documents may only be amended by [insert appropriate reference to person or entity that has the right to amend or change the timeshare instrument or component site document]. The developer does not warrant that such documents are in technical compliance with all applicable Florida laws and regulations. All questions regarding amendment of these documents should be directed to [insert appropriate reference to person or entity that has the right to amend or change the timeshare instrument or component site document].

(ee) Any other information that a seller, with the approval of the division, desires to include in the public offering statement.

(ff) Copies of the following documents and plans, to the extent they are applicable, shall be included as exhibits to the filed public offering statement provided, if the timeshare plan has not been declared or created at the time of the filing, the developer shall provide proposed documents:

1. The declaration of condominium.

2. The cooperative documents.

3. The declaration of covenants and restrictions.

4. The articles of incorporation creating the owners’ association.

5. The bylaws of the owners’ association.

6. Any ground lease or other underlying lease of the real property associated with the timeshare plan. In the case of a personal property timeshare plan, any lease of the personal property associated with the personal property timeshare plan.

7. The management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of 1 year.

8. The estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses.

9. The floor plan of each type of accommodation and the plot plan showing the location of all accommodations and facilities declared as part of the timeshare plan and filed with the division.

10. The lease for any facilities.

11. A declaration of servitude of properties serving the accommodations and facilities, but not owned by purchasers or leased to them or the owners’ association.

12. Any documents required by s. 721.03(3)(e) as the result of the inclusion of a timeshare plan in the conversion of the building to condominium or cooperative ownership.

13. The form of agreement for sale or lease of timeshare interests.

14. The executed agreement for escrow of payments made to the developer prior to closing and the form of any agreement for escrow of ad valorem tax escrow payments, if any, to be made into an ad valorem tax escrow account pursuant to s. 192.037(6).

15. The documents containing any restrictions on use of the property required by paragraph (r).

16. A letter from the escrow agent or filing attorney confirming that the escrow agent and its officers, directors, or other partners are independent pursuant to the requirements of this chapter.

17. Any nondisturbance and notice to creditors instrument required by s. 721.08.

18. In the case of any personal property timeshare plan in which the accommodations and facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., a copy of the certificate of ownership of such vessel and either a copy of the certificate of documentation or certificate of registry of such vessel.

19. An executed affidavit given under oath by an attorney licensed to practice law in any jurisdiction in the United States stating that the attorney has researched the applicable laws of the jurisdiction in which governing law has been established and the laws of the jurisdiction in which the vessel is registered, and has found that the timeshare instrument complies with the provisions of s. 721.08(2)(c)3.e.(II)(C) and (III).

20. Any other documents or instruments creating the timeshare plan.

(gg) 1. Such other information as is necessary to fairly, meaningfully, and effectively disclose all aspects of the timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8).

2. If a developer has, in good faith, attempted to comply with this chapter, and if, in fact, the developer has substantially complied this chapter, nonmaterial errors or omissions are not actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right. The developer has the burden of proof for purposes of this paragraph.

(hh) Notwithstanding the provisions of this subsection, the filed public offering statement for a component site of a multisite timeshare plan filed pursuant to this subsection may contain cross-references to information contained in the related multisite timeshare plan filed public offering statement filed pursuant to s. 721.55 in lieu of repeating such information.

(ii) A statement that the owner’s obligation to pay assessments continues for as long as he or she owns the timeshare interest and that when a person inherits a timeshare interest, that person is responsible for paying those assessments.

(jj) The following statement in conspicuous type:

The managing entity has a lien against each timeshare interest to secure the payment of assessments, ad valorem assessments, tax assessments, and special assessments. Your failure to make any required payments may result in the judicial or trustee foreclosure of an assessment lien and the loss of your timeshare interest. If the managing entity initiates a trustee foreclosure procedure, you shall have the option to object to the use of the trustee foreclosure procedure and the managing entity may only proceed by filing a judicial foreclosure action.

(6) The division is authorized to prescribe by rule the form of the approved purchaser public offering statement that must be furnished by the developer to each purchaser. The form of the purchaser public offering statement must provide fair, meaningful, and effective disclosure of all aspects of the timeshare plan. For timeshare plans filed pursuant to this part, the developer shall furnish each purchaser with the following:

(a) A copy of the purchaser public offering statement text in the form approved by the division for delivery to purchasers.

(b) Copies of the exhibits required to be filed with the division pursuant to subparagraphs (5)(ff)1., 2., 4., 5., 8., and 20.

(c) A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the division which is not delivered to the purchaser. The division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser. The description of documents list utilized by a developer shall be filed with the division for review as part of the filed public offering statement pursuant to this section. The developer shall be required to provide the managing entity with a copy of the approved filed public offering statement and any approved amendments thereto to be maintained by the managing entity as part of the books and records of the timeshare plan pursuant to s. 721.13(3)(d).

(d) Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division.

(e) An executed copy of any document which the purchaser signs.

(f) Each purchaser shall receive a fully executed paper copy of the purchase contract.

(7) The division may accept an alternate form of timeshare disclosure statement under an agreement with another state. At a minimum, the alternate form of timeshare disclosure statement must have provisions substantially similar to this section. The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

## 721.071 Trade secrets.

(1) If a developer or any other person filing material with the division pursuant to this chapter expects the division to keep the material confidential on grounds that the material constitutes a trade secret, as that term is defined in s. 812.081, the developer or other person shall file the material together with an affidavit of confidentiality. “Filed material” for purposes of this section shall mean material that is filed with the division with the expectation that the material will be kept confidential and that is accompanied by an affidavit of confidentiality. Filed material that is trade secret information includes, but is not limited to, service contracts relating to the operation of reservation systems and those items and matters described in s. 815.04(3).

(2) The affidavit that must accompany filed material pursuant to subsection (1) shall contain a general claim of confidentiality; describe the filed materials; identify the basis upon which the claim of confidentiality is made; and contain supporting argument, precedent, legal citation, or other supporting documentation to enable the division to satisfy itself that the claim of confidentiality is not merely specious. The division shall have no duty to inquire into the legal or technical sufficiency of a claim of confidentiality that meets the minimum requirements of this subsection.

(3) In the event that the division is satisfied as to the facial validity of the claim of confidentiality, the division shall keep confidential the affidavit and supporting documentation as well as the filed material and shall not disclose such affidavit, documentation, or filed material to any third party except upon administrative order pursuant to chapter 120 or upon circuit court order.

(4) In the event of any administrative or circuit court proceeding relating to any third party attempt to compel disclosure of filed material or to challenge the confidentiality thereof, the developer or other person who filed the material shall be granted leave to appear as amicus curiae before the administrative law judge or the court. The prevailing party in any such attempt to compel disclosure shall be entitled to recover his or her reasonable attorney fees and costs from the losing party.

(5) In the event that an administrative law judge or court determines that the filed material is not trade secret information, this subsequent disclosure by the division of the filed material pursuant to s. 119.07(1) shall not be construed as a commission of an offense against intellectual property within the meaning of s. 815.04, nor shall the prior refusal of the division to disclose the filed material subject the division to penalty or attorney fees under chapter 119.

## 721.075 Incidental benefits.

Incidental benefits shall be offered only as provided in this section[.**(See also: Rule 61B-37.001)**](#_61B-37.001_Definitions.)

Accommodations, facilities, products, services, discounts, or other benefits which satisfy the requirements of this subsection shall be subject to the provisions of this section and exempt from the other provisions of this chapter which would otherwise apply to such accommodations or facilities if and only if:

(a) The use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation.

(b) No costs of acquisition, operation, maintenance, or repair of the incidental benefit are passed on to purchasers of the timeshare plan as common expenses of the timeshare plan or as common expenses of a component site of a multisite timeshare plan.

(c) The continued availability of the incidental benefit is not necessary in order for any accommodation or facility of the timeshare plan to be available for use by purchasers of the timeshare plan in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or purchaser public offering statement.

(d) The continued availability to purchasers of timeshare plan accommodations on no greater than a one-to-one use right to use night requirement ratio is not dependent upon continued availability of the incidental benefit.

(e) The incidental benefit will continue to be available in the manner represented to prospective purchasers for 3 years or less after the first date that the timeshare plan is available for use by the purchaser. Nothing herein shall prevent the renewal or extension of the availability of an incidental benefit.

(f) The aggregate represented value of all incidental benefits offered by a developer to a purchaser may not exceed 15 percent of the purchase price paid by the purchaser for his or her timeshare interest.

(g) The incidental benefit is filed with the division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.

(2) Each purchaser shall execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement shall include the following information:

(a) A fair description of the incidental benefit, including, but not limited to, any user fees or costs associated therewith; and any restrictions upon use or availability.

(b) A statement that use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation.

(c) A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser.

(d) The following disclosure in conspicuous type immediately above the space for the purchaser's signature:

The incidental benefit(s) described in this statement is [are] offered to prospective purchasers of the timeshare plan [or other permitted reference pursuant to s. 721.11(5)(a)]. This [These] benefit[s] is [are] available for your use for [some period 3 years or less] after the first date that the timeshare plan is available for your use. The availability of the incidental benefit[s] may or may not be renewed or extended. You should not purchase an interest in the timeshare plan in reliance upon the continued availability or renewal or extension of this these benefit[s].

(e) A statement indicating the source of the services, points, or other products that constitute the incidental benefit. The acknowledgment and disclosure statement for any incidental benefit shall be filed with the division prior to use. Each purchaser shall receive a copy of his or her executed acknowledgment and disclosure statement as a document required to be provided to him or her pursuant to s. 721.10(1)(b).

(3) (a) In the event that an incidental benefit becomes unavailable to purchasers in the manner represented by the developer in the acknowledgment and disclosure statement, the developer shall pay the purchaser the greater of twice the verifiable retail value or twice the represented value of the unavailable incidental benefit in cash within 30 days of the date that the unavailability of the incidental benefit was made known to the developer unless the developer has reserved a substitution right pursuant to paragraph (b) and timely makes the substitution as required by paragraph (b). The developer shall promptly notify the division upon learning of the unavailability of any incidental benefit.

(b) If an incidental benefit becomes unavailable as a result of events beyond the control of the developer, the developer may reserve the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit. If the developer reserves the right to substitute, the acknowledgment and disclosure statement required pursuant to paragraph (2) (a) shall contain the following conspicuous disclosure:

In the event any incidental benefit described in this statement becomes unavailable as a result of events beyond the control of the developer, the developer reserves the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit. The substituted incidental benefit shall be delivered to the purchaser within 30 days after the date that the unavailability of the incidental benefit was made known to the developer.

(4) All purchaser remedies pursuant to s. 721.21 shall be available for any violation of the provisions of this section.

## 721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.

(1) Prior to the filing of a public offering statement with the division, all developers shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of purchasers required to be escrowed by this section. An escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. The escrow agent shall retain all affidavits received pursuant to this section for a period of 5 years. Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent shall immediately notify the division of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(2) One hundred percent of all funds or other property which is received from or on behalf of purchasers of the timeshare plan or timeshare interest prior to the occurrence of events required in this subsection shall be deposited pursuant to an escrow agreement approved by the division. The funds or other property may be released from escrow only as follows:

(a) Cancellation.—In the event a purchaser gives a valid notice of cancellation pursuant to s. 721.10 or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the purchaser, or the proceeds thereof, shall be returned to the purchaser. Such refund shall be made within 20 days after demand therefor by the purchaser or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later. If the purchaser has received benefits under the contract prior to the effective date of the cancellation, the funds or other property to be returned to the purchaser may be reduced by the proportion of contract benefits actually received.

(b) Purchaser's default.—Following expiration of the 10-day cancellation period, if the purchaser defaults in the performance of her or his obligations under the terms of the contract to purchase or such other agreement by which a seller sells the timeshare interest, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed funds or other property and shall provide a copy of such affidavit to the purchaser who has defaulted. The developer's affidavit, as required herein, shall include:

1. A statement that the purchaser has defaulted and that the developer has not defaulted;

2. A brief explanation of the nature of the default and the date of its occurrence;

3. A statement that pursuant to the terms of the contract the developer is entitled to the funds held by the escrow agent; and

4. A statement that the developer has not received from the purchaser any written notice of a dispute between the purchaser and developer or a claim by the purchaser to the escrow.

(c) Compliance with conditions.—

1. Timeshare licenses.—If the timeshare plan is one in which timeshare licenses are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

(IV) Either:

(A) Execution, delivery, and recordation by each interestholder of the nondisturbance and notice to creditors instrument, as described in this section; or,

(B) Transfer by the developer of legal title to the subject accommodations and facilities, or all use rights therein, into a trust satisfying the requirements of subparagraph 4. and the execution, delivery, and recordation by each other interestholder of the nondisturbance and notice to creditors instrument, as described in this section.

b. A certified copy of each recorded nondisturbance and notice to creditors instrument.

c. One of the following:

(I) A copy of a memorandum of agreement, as defined in s. 721.05, together with satisfactory evidence that the original memorandum of agreement has been irretrievably delivered for recording to the appropriate official responsible for maintaining the public records in the county in which the subject accommodations and facilities are located. The original memorandum of agreement must be recorded within 180 days after the date on which the purchaser executed her or his purchase agreement.

(II) A notice delivered for recording to the appropriate official responsible for maintaining the public records in each county in which the subject accommodations and facilities are located notifying all persons of the identity of an independent escrow agent or trustee satisfying the requirements of subparagraph 4. that shall maintain separate books and records, in accordance with good accounting practices, for the timeshare plan in which timeshare licenses are to be sold. The books and records shall indicate each accommodation and facility that is subject to such a timeshare plan and each purchaser of a timeshare license in the timeshare plan.

2. Timeshare estates.—If the timeshare plan is one in which timeshare estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the timeshare estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

c. Evidence that each accommodation and facility:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument;

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17; or

(III) Has been transferred into a trust satisfying the requirements of subparagraph 4.

d. Evidence that the timeshare estate:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument; or

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17.

3. Personal property timeshare interests.—If the timeshare plan is one in which personal property timeshare interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the personal property timeshare interest is sold by agreement for transfer, evidence that the agreement for transfer complies fully with s. 721.06 and this section.

c. Evidence that one of the following has occurred:

(I) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into a trust satisfying the requirements of subparagraph 4.; or

(II) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into an owners’ association satisfying the requirements of subparagraph 5.

d. Evidence of compliance with the provisions of subparagraph 6., if required.

e. If a personal property timeshare plan is created with respect to accommodations and facilities that are located on or in an oceangoing vessel, including a “documented vessel” or a “foreign vessel,” as defined and governed by 46 U.S.C., chapter 301:

(I) In making the transfer required in sub-subparagraph c., the developer shall use as its transfer instrument a document that establishes and protects the continuance of the use rights in the subject accommodations and facilities in a manner that is enforceable by the trust or owners’ association.

(II) The transfer instrument shall comply fully with the provisions of this chapter, shall be part of the timeshare instrument, and shall contain specific provisions that:

(A ) Prohibit the vessel owner, the developer, any manager or operator of the vessel, the owners’ association or the trustee, the managing entity, or any other person from incurring any liens against the vessel except for liens that are required for the operation and upkeep of the vessel, including liens for fuel expenditures, repairs, crews’ wages, and salvage, and except as provided in sub-sub-subparagraphs 4.b.(III) and 5.b.(III). All expenses, fees, and taxes properly incurred in connection with the creation, satisfaction, and discharge of any such permitted lien, or a prorated portion thereof if less than all of the accommodations on the vessel are subject to the timeshare plan, shall be common expenses of the timeshare plan.

(B) Grant a lien against the vessel in favor of the owners’ association or trustee to secure the full and faithful performance of the vessel owner and developer of all of their obligations to the purchasers.

(C) Establish governing law in a jurisdiction that recognizes and will enforce the timeshare instrument and the laws of the jurisdiction of registry of the vessel.

(D) Require that a description of the use rights of purchasers be posted and displayed on the vessel in a manner that will give notice of such rights to any party examining the vessel. This notice must identify the owners’ association or trustee and include a statement disclosing the limitation on incurring liens against the vessel described in sub-sub-sub-subparagraph (A).

(E) Include the nondisturbance and notice to creditors instrument for the vessel owner and any other interestholders.

(F) The owners’ association created under subparagraph 5. or trustee created under subparagraph 4. shall have access to any certificates of classification in accordance with the timeshare instrument.

(III) If the vessel is a foreign vessel, the vessel must be registered in a jurisdiction that permits a filing evidencing the use rights of purchasers in the subject accommodations and facilities, offers protection for such use rights against unfiled and inferior claims, and recognizes the document or instrument creating such use rights as a lien against the vessel.

(IV) In addition to the disclosures required by s. 721.07(5), the public offering statement and purchase contract must contain a disclosure in conspicuous type in substantially the following form:

The laws of the State of Florida govern the offering of this timeshare plan in this state. There are inherent risks in purchasing a timeshare interest in this timeshare plan because the accommodations and facilities of the timeshare plan are located on a vessel that will sail into international waters and into waters governed by many different jurisdictions. Therefore, the laws of the State of Florida cannot fully protect your purchase of an interest in this timeshare plan. Specifically, management and operational issues may need to be addressed in the jurisdiction in which the vessel is registered, which is ........(insert jurisdiction in which vessel is registered). Concerns of purchasers may be sent to ........(insert name of applicable regulatory agency and address).

4. Trust.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into a trust in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph. . If the accommodations or facilities included in such transfer are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan pursuant to s. 721.07(5)(f)4.

b. Prior to the transfer of the subject accommodations and facilities, or all use rights therein, to a trust, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the trustee accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this subparagraph shall comply with the following provisions:

(I) The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan. (II) The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the timeshare plan and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The trustee shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan or the owners’ association of the timeshare plan shall be the express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession, custody, or control of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

(V) The trustee shall not resign upon less than 90 days prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

(VI) The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

(VII) For trusts holding property in a timeshare plan located outside this state, the trust and trustee holding such property shall be deemed in compliance with the requirements of this subparagraph if such trust and trustee are authorized and qualified to conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for trusts holding property in a timeshare plan in this state.

(VIII) The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

5. Owners’ association.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into an owners’ association in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph.

b. Before the transfer of the subject accommodations and facilities, or all use rights therein, to an owners’ association, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the owners’ association accepts such transfer and the responsibilities set forth herein. An owners’ association established pursuant to this subparagraph shall comply with the following provisions:

(I) The owners’ association shall be a business entity authorized and qualified to conduct business in this state. Control of the board of directors of the owners’ association must be independent from any developer or managing entity of the timeshare plan or any interestholder.

(II) The bylaws of the owners’ association shall provide that the corporation may not be voluntarily dissolved without the unanimous vote of all owners of personal property timeshare interests so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The owners’ association shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy, unless the timeshare plan is terminated pursuant to the timeshare instrument, or unless such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the association and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The owners’ association shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division’s interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan shall be members of the owners’ association and shall be entitled to vote on matters requiring a vote of the owners’ association as provided in this chapter or the timeshare instrument. The owners’ association shall act as a fiduciary to the purchasers of the timeshare plan. The articles of incorporation establishing the owners’ association shall set forth the duties of the owners’ association. All expenses reasonably incurred by the owners’ association in the performance of its duties, together with any reasonable compensation of the officers or directors of the owners’ association, shall be common expenses of the timeshare plan.

(V) The documents establishing the owners’ association shall constitute a part of the timeshare instrument.

(VI) For owners’ associations holding property in a timeshare plan located outside this state, the owners’ association holding such property shall be deemed in compliance with the requirements of this subparagraph if such owners’ association is authorized and qualified to conduct owners’ association business under the laws of such jurisdiction and the agreement or law governing such arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for owners’ associations holding property in a timeshare plan in this state.

(VII) The owners’ association shall have appointed a registered agent in this state for service of process. In the event such a registered agent cannot be located, service of process may be made pursuant to s. 721.265.

6. Personal property subject to certificate of title.—If any personal property that is an accommodation or facility of a timeshare plan is subject to a certificate of title in this state pursuant to chapter 319 or chapter 328, the following notation must be made on such certificate of title pursuant to s. 319.27(1) or s. 319.27(1): The further transfer or encumbrance of the property subject to this certificate of title, or any lien or encumbrance thereon, is subject to the requirements of section 721.17, Florida Statutes, and the transferee or lienor agrees to be bound by all of the obligations set forth therein.

7. If the developer has previously provided a certified copy of any document required by this paragraph, she or he may for all subsequent disbursements substitute a true and correct copy of the certified copy, provided no changes to the document have been made or are required to be made.

8. In the event that use rights relating to an accommodation or facility are transferred into a trust pursuant to subparagraph 4. or into an owners’ association pursuant to subparagraph 5., all other interestholders, including the owner of the underlying fee or underlying personal property, must execute a nondisturbance and notice to creditors instrument pursuant to subsection (3).

Section 31.

(1) The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before the effective date of this act and would be subject to this act if it had been entered into or created on or after the effective date of this act remain valid on and after the effective date of this act.

(2) This act does not affect an action or proceeding commenced before the effective date of this act.

(3) Except as otherwise provided in subsection (4), a security interest that is enforceable immediately before the effective date of this act and would have priority over the rights of a person who becomes a lien creditor at that time is a perfected security interest under this act.

(4) A security interest perfected immediately before the effective date of this act remains perfected until the earlier of:

(a) The time perfection would have ceased under the law under which the security interest was perfected; or

(b) Three years after the effective date of this act.

(5) This act does not affect the priority of a security interest in a vessel if immediately before the effective date of this act the security interest is enforceable and perfected, and that priority is established. Section 32. Subject to section 31, this act applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before the effective date of this act.

Section 32. Subject to section 31, this act applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before the effective date of this act.

Section 33. This act shall take effect July 1, 2023.

(d) Substitution of other assurances for escrowed funds or other property.—Funds or other property escrowed as provided in this section may be released from escrow to or on the order of the developer upon acceptance by the director of the division of other assurances pursuant to subsection (5) as a substitute for such escrowed funds or other property. The amount of escrowed funds or other property that may be released pursuant to this paragraph shall be equal to or less than the face amount of the assurances accepted by the director from time to time.

(3) NONDISTURBANCE AND NOTICE TO CREDITORS INSTRUMENT.—

The nondisturbance and notice to creditors instrument, when required, shall be executed by each interestholder.

(a) The instrument shall state that:

1. If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the timeshare plan;

2. The instrument shall be effective as between the timeshare purchaser and interestholder despite any rejection or cancellation of the contract between the timeshare purchaser and developer as a result of bankruptcy proceedings of the developer; and

3. So long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, then the interestholder will honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument. The instrument shall contain language sufficient to provide subsequent creditors of the developer and interestholders with notice of the existence of the timeshare plan and of the rights of purchasers and shall serve to protect the interest of the timeshare purchasers from any claims of subsequent creditors.

(b) Real property timeshare plans.—For real property timeshare plans, the instrument shall be recorded in the public records of the county in which the subject accommodations or facilities are located.

(c) Personal property timeshare plans.—For personal property timeshare plans, the instrument shall be included within or attached as an exhibit to a security agreement or other agreement executed by the interestholder. Constructive notice of such security agreement or other agreement shall be filed in the manner prescribed by chapter 679 or other applicable law.

(d) A copy of the recorded or filed nondisturbance and notice to creditors instrument, when required, shall be provided to each timeshare purchaser at the time the purchase contract is executed.

(4) In lieu of any escrow provisions required by this act, the director of the division shall have the discretion to permit deposit of the funds or other property in an escrow account as required by the jurisdiction in which the sale took place.

(5) (a) In lieu of any escrows required by this section, the director of the division shall have the discretion to accept other assurances, including, but not limited to, a surety bond issued by a company authorized and licensed to do business in this state as surety or an irrevocable letter of credit in an amount equal to the escrow requirements of this section.

(b) Notwithstanding anything in chapter 718 or chapter 719 to the contrary, the director of the division shall have the discretion to accept other assurances pursuant to paragraph (a) in lieu of any requirement that completion of construction of one or more accommodations or facilities of a timeshare plan be accomplished prior to closing.

(c) In lieu of a nondisturbance and notice to creditors instrument, when such an instrument is otherwise required by this section, the director of the division shall have the discretion to accept alternate means of protecting the continuing rights of purchasers in and to the subject accommodations or facilities of the timeshare plan as and for the term described in the timeshare instrument, and of providing effective constructive notice of such continuing purchaser rights to subsequent owners of the accommodations or facilities and to subsequent creditors of the affected interestholder.

(d) In lieu of the requirements in sub-sub-subparagraph 721.08(2)(c)3.e.(III), the director of the division shall have the discretion to accept alternate means of protecting the use rights of purchasers in the subject accommodations and facilities of the timeshare plan against unfiled and inferior claims.

(6) An escrow agent holding funds escrowed pursuant to this section may invest such escrowed funds in securities of the United States Government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States Government. The right to receive the interest generated by any such investments shall be paid to the party to whom the escrowed funds or other property are paid unless otherwise specified by contract.

(7) Each escrow agent shall maintain separate books and records for each timeshare plan and shall maintain such books and records in accordance with good accounting practices.

(8) An escrow agent holding escrowed funds pursuant to this chapter that have not been claimed for a period of 5 years after the date of deposit shall make at least one reasonable attempt to deliver such unclaimed funds to the purchaser who submitted such funds to escrow. In making such attempt, an escrow agent is entitled to rely on a purchaser's last known address as set forth in the books and records of the escrow agent and is not required to conduct any further search for the purchaser. If an escrow agent's

attempt to deliver unclaimed funds to any purchaser is unsuccessful, the escrow agent may deliver such unclaimed funds to the division and the division shall deposit such unclaimed funds in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, 30 days after giving notice in a publication of general circulation in the county in which the timeshare property containing the purchaser's timeshare interest is located. The purchaser may claim the same at any time prior to the delivery of such funds to the division. After delivery of such funds to the division, the purchaser shall have no more rights to the unclaimed funds. The escrow agent shall not be liable for any claims from any party arising out of the escrow agent's delivery of the unclaimed funds to the division pursuant to this section.

(9) For each transfer of the legal title to a timeshare estate by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser or to a title insurance agent or the clerk of the court for recording. For each transfer of the legal title to a personal property timeshare interest by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser subject to the provisions of this section.

(10) (a) Any developer, seller, or escrow agent who intentionally fails to comply with the provisions of this section concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this section.

(b) Any developer, interestholder, trustee, or officer or director of an owners’ association who intentionally fails to comply with the provisions of this section concerning the establishment of a trust or owners’ association, conveyances of property into the trust or owners’ association, and conveyances or encumbrances of trust or owners’ association property is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish a trust or owners’ association, or to transfer property into the trust or owners’ association, or the failure of a trustee or officer or director of an owners’ association to comply with the trust agreement, articles of incorporation, or bylaws with respect to conveyances or encumbrances of trust or owners’ association property, as required by this section, is prima facie evidence of an intentional and purposeful violation of this section.

(11) A timeshare instrument, declaration of condominium, or other instrument establishing or governing a component site property regime is not an encumbrance for purposes of this chapter and does not create a requirement for a nondisturbance and notice to creditors instrument for purposes of this section or a subordination and notice to creditors instrument for purposes of s. 721.53 from the managing entity, owners’ association, or any other person. This subsection is intended only as a clarification of existing law.

## 721.09 Reservation agreements; escrows.

(1) (a) Prior to filing the filed public offering statement with the division, a seller shall not offer a timeshare plan for sale but may accept reservation deposits and advertise the reservation deposit program upon approval by the division of a fully executed escrow agreement and reservation agreement properly filed with the division.

(b) Reservations shall not be taken on a timeshare plan unless the seller has an ownership interest, leasehold interest, or legal option to purchase or lease of a duration at least equal to the duration of the proposed timeshare plan, in the land upon which the timeshare plan is to be developed.

(c) If the timeshare plan subject to the reservation agreement has not been filed with the division under s. 721.07(5) or s. 721.55 within 180 days after the date the division approves the reservation agreement filing, the seller must immediately cancel all outstanding reservation agreements, refund all escrowed funds to prospective purchasers, and discontinue accepting reservation deposits or advertising the availability of reservation agreements.

(d) A seller who has filed a reservation agreement and an escrow agreement under this section may advertise the reservation agreement program if the advertising material meets the following requirements:

1. The seller complies with the provisions of s. 721.11 with respect to such advertising material.

2. The advertising material is limited to a general description of the proposed timeshare plan, including, but not limited to, a general description of the type, number, and size of accommodations and facilities and the name of the proposed timeshare plan.

3. The advertising material contains a statement that the advertising material is being distributed in connection with an approved reservation agreement filing only and that the seller cannot offer an interest in the timeshare plan for sale until a filed public offering statement has been filed with the division under this chapter.

(2) Each executed reservation agreement shall be signed by the developer and shall contain the following:

(a) A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit upon the written request of either the purchaser or the seller directed to the escrow agent.

(b) A statement that the escrow agent may not otherwise release moneys unless a contract is signed by the purchaser, authorizing the transfer of the escrowed reservation deposit as a deposit on the purchase price. Such deposit shall then be subject to the requirements of s. 721.08.

(c) A statement of the obligation of the developer to file a filed public offering statement with the division prior to entering into binding contracts.

(d) A statement of the right of the purchaser to receive the purchaser public offering statement required by this chapter.

(e) The name and address of the escrow agent and a statement that the escrow agent will provide a receipt.

(f) A statement that the seller assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for the purchase or that the price represented may be exceeded within a stated amount or percentage or a statement that no assurance is given as to the price in the contract for purchase.

(3) (a) The total amount paid for a reservation shall be deposited into a reservation escrow account.

(b) An escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent.

(c) The escrow agent may invest the escrowed funds in securities of the United States Government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States Government. The interest generated by any such investments shall be payable to the party entitled to receive the escrowed funds or other property.

(d) The escrowed funds shall at all reasonable times be available for withdrawal in full by the escrow agent.

(e) Each escrow agent shall maintain separate books and records for each timeshare plan and shall maintain such books and records in accordance with good accounting practices.

(f) Any seller or escrow agent who intentionally fails to comply with the provisions of this section regarding deposit of funds in escrow and withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor of any of such sections. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this section.

## 721.10 Cancellation.

(1) A purchaser has the right to cancel the contract until midnight of the 10th calendar day following whichever of the following days occurs later:

(a) The execution date; or

(b) The day on which the purchaser received the last of all documents required to be provided to him or her, including the notice required by s. 721.07(2)(d)2., if applicable. This right of cancellation may not be waived by any purchaser or by any other person on behalf of the purchaser. Furthermore, no closing may occur until the cancellation period of the timeshare purchaser has expired. Any attempt to obtain a waiver of the cancellation right of the timeshare purchaser, or to hold a closing prior to the expiration of the cancellation period, is unlawful and such closing is voidable at the option of the purchaser for a period of 1 year after the expiration of the cancellation period. However, nothing in this section precludes the execution of documents in advance of closing for delivery after expiration of the cancellation period.

(2) Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted from the place of origin if telegraphed, so long as the notice is actually received by the developer or escrow agent. If given by means of a writing transmitted other than by mail or telegraph, the notice of cancellation shall be considered given at the time of delivery at the place of business of the developer.

(3) In the event of a timely preclosing cancellation, the developer shall honor the right of any purchaser to cancel the contract which granted the timeshare purchaser rights in and to the plan. Upon such cancellation, the developer shall refund to the purchaser the total amount of all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation, as required by s. 721.06. Such refund shall be made within 20 days of demand therefor by the purchaser or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

## 721.11 Advertising materials; oral statements.

(See also: Rule [61B-37.001](#_61B-37.001_Definitions.))

(1) (a) A developer may file advertising material with the division for review. The division shall review any advertising material filed for review by the developer and notify the developer of any deficiencies within 10 days after the filing. If the developer corrects the deficiencies or if there are no deficiencies, the division shall notify the developer of its approval of the advertising materials. Notwithstanding anything to the contrary contained in this subsection, so long as the developer uses advertising materials approved by the division, following the developer's request for a review, the developer shall not be liable for any violation of this section or s. 721.111 with respect to such advertising materials.

(b) All advertising materials must be substantially in compliance with this chapter and in full compliance with the mandatory provisions of this chapter. In the event that any such material is not in substantial compliance with this chapter, the division may file administrative charges and an injunction against the developer and exact such penalties or remedies as provided in s. 721.26, or may require the developer to correct any deficiency in the materials by notifying the developer of the deficiency. If the developer fails to correct the deficiency after such notification, the division may file administrative charges against the developer and exact such penalties or remedies as provided in s. 721.26.

(See also: [Rule 61B-37.002](#_61B-37.002_Advertising_Material.))

(2) The term “advertising material" includes:

(a) Any promotional brochure, pamphlet, advertisement, or other material to be disseminated to the public in connection with the sale of a timeshare plan.

(b) Any radio or television advertisement.

(c) Any lodging or vacation certificate.

(d) Any standard oral sales presentation.

(e) Any billboard or other sign posted on or off the premises, except that such billboard or sign shall not be required to contain the disclosure set forth in paragraph (5)(a) or paragraph (5)(b), unless it relates to a prize and gift promotional offer. For purposes of this section, a “sign" shall mean advertising which is affixed to real or personal property and which is not disseminated by other than visual means to prospective purchasers.

(f) Any photograph, drawing, or artist's representation of accommodations or facilities of a timeshare plan which exists or which will or may exist.

(g) Any paid publication relating to a timeshare plan which exists or which will or may exist.

(h) Any other promotional device used, or statement related to a timeshare plan, including any prize and gift promotional offer as described in s. 721.111.

(3) The term “advertising material" does not include:

(a) Any stockholder communication such as an annual report or interim financial report, proxy material, registration statement, securities prospectus, registration, property report, or other material required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government.

(b) Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale and purchase of a timeshare interest in the timeshare plan to which the communication relates, except when directed to the sale of timeshare interests in a different timeshare plan or in a different component site of a multisite timeshare plan subject to part II.

(c) Any audio, written, or visual publication or material relating to an exchange company or exchange program.

(d) Any audio, written, or visual publication or material relating to the promotion of the availability of any accommodations or facilities, or both, for transient rental, including any arrangement governed by part XI of chapter 559, so long as a mandatory tour of a timeshare plan or attendance at a mandatory sales presentation is not a term or condition of the availability of such accommodations or facilities, or both, and so long as the failure of any transient renter to take a tour of a timeshare plan or attend a sales presentation does not result in the transient renter receiving less than what was promised to the transient renter in such materials.

(e) Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property, including possible accommodations or facilities of a timeshare plan pursuant to subsection (7) or subsection (8), or possible component sites of a multisite timeshare plan pursuant to subsection (9). However, any rebroadcast or any other dissemination of such oral statements to a prospective purchaser by a seller in any manner, or any distribution of copies of newspaper or magazine articles, press releases, or any other dissemination of such written statements to a prospective purchaser by a seller in any manner, shall constitute advertising material.

(f) Any promotional materials relating to a timeshare plan that are not directed specifically at residents of this state, regardless of whether such materials relate to accommodations or facilities located in this state, provided that such materials do not contain any statements that would be in violation of subsection (4).For purposes of this paragraph, a rebuttable presumption shall exist that promotional materials are not directed specifically at residents of this state if the materials include a disclaimer in substantially the following form:

This offer is not directed to residents in any state [or the offer is void in any states] in which a registration of the timeshare plan is required but in which registration requirements have not yet been met.

(g) Any materials delivered to a purchaser after the purchase contract is executed that are not delivered for the purpose of soliciting the sale of a timeshare interest in a different timeshare plan or a different component site ina multisite timeshare plan subject to part 11, provided that such materials do not contain any statements that would be in violation of subsection (4).

(h) Any materials exclusively shown, displayed, or presented in a sales center or during a sales presentation provided that such materials do not contain any statements that would be in violation of subsection (4) and that any description of any facility that is not required to be built or that has not been completed shall be conspicuously labeled as "NEED NOT BE BUILT," "PROPOSED," or “UNDER CONSTRUCTION."

If the facility is labeled "NEED NOT BE BUILT" or 'PROPOSED," the seller may indicate the estimated date that such facility will be made part of the timeshare plan. If the facility is labeled "UNDER CONSTRUCTION," the estimated date of completion must be included.

(4) No advertising or oral statement made by any seller or resale service provider shall: **(See also:** [**Rule 61B-37.002**](#_61B-37.002_Advertising_Material.)**)**

(a) Misrepresent a fact or create a false or misleading impression regarding the timeshare plan or promotion thereof.

(b) Make a prediction of specific or immediate increases in the price or value of timeshare interests.

(c) Contain a statement concerning future price increases by a seller which are nonspecific or not bona fide.

(d) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact.

(e) Describe any facility that is not required to be built or that is uncompleted unless the improvement is conspicuously labeled as “NEED NOT BE BUILT," “PROPOSED," or “UNDER CONSTRUCTION." If the facility is labeled “NEED NOT BE BUILT” or “PROPOSED,” the seller may indicate the estimated date that such facility will be made part of the timeshare plan. If the facility is labeled “UNDER CONSTRUCTION,” the estimated date of completion must be included.(f) Misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations or facilities.

(g) Misrepresent the amount or period of time during which the accommodations or facilities will be available to any purchaser.

(h) Misrepresent the nature or extent of any incidental benefit.

(i) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the rights, privileges, benefits, or obligations of the purchaser under the contract or this chapter.

(j) Misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location.

(k) Misrepresent the availability of a resale or rental program or resale or rental opportunity.

(l) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity or time limit applicable to the offer or inducement is clearly stated.

(m) Imply that a facility is available for the exclusive use of purchasers if the facility will actually be shared by others or by the general public.

(n) Purport to have resulted from a referral unless the name of the person making the referral can be produced upon demand of the division.

(o) Misrepresent the source of the advertising or statement by leading a prospective purchaser to believe that the advertising material is mailed by a governmental or official agency, credit bureau, bank, or attorney, if that is not the case.

(p) Misrepresent the value of any prize, gift, or other item to be awarded in connection with any prize and gift promotional offer, as described in s. 721.111, or any incidental benefit.

(q) Misrepresent or falsely imply that the resale service provider is affiliated with, or obtained personal contact information from, a developer, managing entity, or exchange company.

(5) (a) No written advertising material, including any lodging certificate, gift award, premium, discount, or display booth, may be utilized without each prospective purchaser being provided a disclosure in conspicuous type in substantially the following form: This advertising material is being used for the purpose of soliciting sales of timeshare interests; or This advertising material is being used for the purpose of soliciting sales of a vacation (or vacation membership or vacation ownership) plan. The division shall have the discretion to approve the use of an alternate disclosure. The conspicuous disclosure required in this subsection shall only be required to be given to each prospective purchaser on one piece of advertising for each advertising promotion or marketing campaign, provided that if the promotion or campaign contains terms and conditions, the conspicuous disclosure required in this subsection shall be included on any piece containing such terms and conditions. The conspicuous disclosure required in this subsection shall be provided before the purchaser is required to take any affirmative action pursuant to the promotion. Ifthe advertising material containing the conspicuous disclosure is a display booth, the disclosure required by this subsection must be conspicuously displayed on or within the display booth.

(b) This subsection does not apply to any advertising material which involves a project or development which includes sales of real estate or other commodities or services in addition to timeshareinterests, including, but not limited to, lot sales, condominium or home sales, or the rental of resort accommodations. However, if the sale of timeshare interests, as compared with such other sales or rentals, is the primary purpose of the advertising material, a disclosure shall be made in conspicuous type that: This advertising material is being used for the purpose of soliciting the sale of (Disclosure shall include timeshare interests and may include other types of sales). Factors which the division may consider in determining whether the primary purpose of the advertising material is the sale of timeshare interests include:

1. The retail value of the timeshare interests compared to the retail value of the other real estate, commodities, or services being offered in the advertising material.

2. The amount of space devoted to the timeshare portion of the project in the advertising material compared to the amount of space devoted to other portions of the project, including, but not limited to, printed material, photographs, or drawings.

(6) Failure to provide cancellation rights or disclosures as required by this subsection in connection with the sale of a regulated short-term product constitutes misrepresentation in accordance with paragraph (4)(a). Any agreement relating to the sale of a regulated short-term product must be regulated as advertising material and is subject to the following:

(a) A standard form of any agreement relating to the sale of a regulated short-term product may be filed 10 days prior to use with the division as advertising material under this section. Each seller shall furnish each purchaser of a regulated short-term product with a fully completed and executed copy of the agreement at the time of execution.

(b) A purchaser of a regulated short-term product has the right to cancel the agreement until midnight of the 10th calendar day following the execution date of the agreement. The right of cancellation may not be waived by the prospective purchaser or by any other person on behalf of the prospective purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation under s. 721.10(2). If the prospective purchaser gives a valid notice of cancellation or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the prospective purchaser, or the proceeds thereof, must be returned to the prospective purchaser. Such refund must be made in the same manner prescribed for refunds under s. 721.10.

(c) An agreement for purchase of a regulated short-term product must contain substantially the following statements, given at the time the agreement is made:

1. A statement that if the purchaser of a regulated short-term product cancels the agreement during the 10-day cancellation period, the seller will refund to the prospective purchaser the total amount of all payments made by the prospective purchaser under the agreement, reduced by the proportion of any benefits the prospective purchaser has actually received under the agreement prior to the effective date of the cancellation; and

2. A statement that the specific value for each benefit received by the prospective purchaser under the agreement will be as agreed to between the prospective purchaser and the seller.

(d) An agreement for purchase of a regulated short-term product must contain substantially the following statements in conspicuous type immediately above the space reserved in the agreement for the signature of the prospective purchaser:

You may cancel this agreement without any penalty or obligation within 10 calendar days [or specify a longer time period represented to the purchaser] after the date you sign this agreement. If you decide to cancel this agreement, you must notify the seller in writing of your intent to cancel. Your notice of cancellation is effective upon the date sent and must be sent to (Name of Seller) at (Address of Seller) . Any attempt to obtain a waiver of your cancellation right is unlawful. If you execute a purchase contract for a timeshare interest, section 721.08, Florida Statutes (escrow accounts), will apply to any funds or other property received from you or on your behalf. Section 721.10, Florida Statutes (cancellation), will apply to the purchase and you will not be entitled to a cancellation refund of the short-term product [or specify an alternate refund policy under these circumstances].

(e) If the seller provides the purchaser with the right to cancel the purchase of a regulated short-term product at any time up to 7 days prior to the purchaser's reserved use of the accommodations, but in no event less than 10 days, and if the seller refunds the total amount of all payments made by the purchaser reduced by the proportion of any benefits the purchaser has actually received prior to the effective date of the cancellation, the specific value of which has been agreed to between the purchaser and the seller, the short-term product offer shall be exempt from the requirements of paragraphs (b), (c), and (d). An agreement relating to the sale of the regulated short-term product made pursuant to this paragraph must contain a statement setting forth the cancellation and refund rights of the prospective purchaser in a manner that is consistent with this section and s. 721.10, including a description of the length of the cancellation right, a statement that the purchaser's intent to cancel must be in writing and sent to the seller at a specified address, a statement that the notice of cancellation is effective upon the date sent, and a statement that any attempt to waive the cancellation right is unlawful. The right of cancellation provided to the purchaser pursuant to this paragraph may not be waived by the prospective purchaser or by any other person on behalf of the prospective purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation pursuant to s. 721.10(2). If the prospective purchaser gives a valid notice of cancellation, or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the prospective purchaser, or the proceeds thereof, shall be returned to the prospective purchaser. Such refund shall be made in the manner prescribed for refunds under s. 721.10.

(7) Notwithstanding the provisions of s. 721.05(7)(b), a seller may portray possible accommodations or facilities to prospective purchasers in advertising material, or a purchaser public offering statement, without such accommodations or facilities being available for use by purchasers so long as the advertising material or purchaser public offering statement complies with the provisions of subsection (4).

(8) Notwithstanding the provisions of s. 721.05(7)(b), a developer may portray possible accommodations or facilities to prospective purchasers by disseminating oral or written statements regarding same to broadcast or print media with no obligation on the developer's part to actually construct such accommodations or facilities or to file such accommodations or facilities with the division, but only so long as such oral or written statements are not considered advertising material pursuant to paragraph (3)(e).

(9) Notwithstanding the provisions of s. 721.05(7)(b), a seller of a multisite timeshare plan may portray a possible component site to prospective purchasers with no accommodations or facilities located at such component site being available for use by purchasers so long as the seller satisfies the following requirements:

(a) Adeveloper of a multisite timeshare plan may disseminate oral or written statements to broadcast or print media describing a possible component site with no obligation on the developer’s part to actually add such component site to the multisite timeshare plan or to amend the developer's filing with the division, but only so long as such oral or written statements are not considered advertising material pursuant to paragraph (3)(e).

(b) A seller may make representations to purchasers in advertising material or in a purchaser public offering statement regarding the possible accommodations and facilities of a possible component site without such accommodations or facilities being available for use by purchasers so long as the advertising material or purchaser public offering statement complies with the provisions of subsection (4).

(c) In the event a seller makes any of the representations permitted by paragraph (b), the purchase agreement must contain the following conspicuous disclosure unless and until such time as the developer has committed itself in the timeshare instrument to adding the possible component site to the multisite timeshare plan, at which time the seller may portray the component site pursuant to the timeshare instrument without restriction:

[Description of possible component site] is only apossible component site which may never be added to the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club). Do not purchase an interest in the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) in reliance upon the addition of this component site.

(d) Notwithstanding anything contained in this chapter to the contrary, a developer or managing entity may communicate with existing purchasers regarding possible component sites without restriction, so long as all oral and written statements made to existing purchasers pursuant to this subsection comply with the provisions of subsection (4).

(e) Any violation of this subsection by a developer, seller, or managing entity shall constitute a violation of this chapter. Any violation of this subsection with respect to a purchaser whose purchase has not yet closed shall be deemed to provide that purchaser with a new 10-day voidability period.

## 721.111 Prize and gift promotional offers.

(See also: [Rule 61B-37.001](#_61B-37.001_Definitions.))

As used herein, the term “prize and gift promotional offer" means any advertising material wherein a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate.

(2) A game promotion, such as a contest of chance, gift enterprise, or sweepstakes, in which the elements of chance and prize are present may not be used in connection with the offering or sale of timeshare interests, except for drawings, as that term is defined in s. 849.0935(1)(a), in which no more than 26 prizes are promoted and in which all promoted prizes are actually awarded. All such drawings must meet all requirements of this chapter and of ss. 849.092 and 849.094(1), (2), and (7).

(3) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day she or he appears to claim it, whether or not she or he purchases a timeshare interests.

(4) [**(See also: Rule 61B-37.004(2)**](#_61B-37.002_Advertising_Material.)A separate filing for each prize and gift promotional offer to be used in the sale of timeshare interests shall be made with the division pursuant to s. 721.11(1). The developer shall pay a $100 filing fee for each prize and gift promotional offer. One item of each prize or gift, except cash, must be made available for inspection by the division.

(5) Each filing of a prize and gift promotional offer with the division shall include, when applicable:

(a) A copy of all advertising material to be used in connection with the prize and gift promotional offer.

(b) The name, address, and telephone number (including area code) of the supplier or manufacturer from whom each type or variety of prize, gift, or other item is obtained.

(c) The manufacturer's model number or other description of such item.

(d) The information on which the developer relies in determining the verifiable retail value, if the value is in excess of $50.

(e) The name, address, and telephone number (including area code) of the promotional entity responsible for overseeing and operating the prize and gift promotional offer.

(f) The name and address of the registered agent in this state of the promotional entity for service of process purposes.

(g) Full disclosure of all pertinent information concerning the use of lodging or vacation certificates, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The developer shall provide to the division, upon the request of the division, an affidavit, certification, or other reasonable evidence that the obligation incurred by a seller or the seller's agent in a lodging certificate program can be met.

(6) All advertising material to be distributed in connection with a prize and gift promotional offer shall contain, in addition to the information required pursuant to the provisions of s. 721.11, the following disclosures:

(a) A description of the prize, gift, or other item that the prospective purchaser will actually receive, including, if the price is in excess of $50, the manufacturer's suggested retail price or, if none is available, the verifiable retail value. If the value is $50 or less, the description shall contain a statement of such.

(b) All rules, terms, requirements, and preconditions which must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item.

(c) The date upon which the offer expires.

(d) If the number of prizes, gifts, or other items to be awarded is limited, a statement of the number of items that will be awarded.

(e) The method by which prizes, gifts, or other items are to be awarded.

(7) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer shall be awarded by the date referenced in the advertising material used in connection with such offer.

## 721.12 Recordkeeping by seller.

Each seller of a timeshare plan shall maintain among its business records the following:

(1) A copy of each contract for the sale of a timeshare interest, which contract has not been canceled. If a timeshare estate is being sold, the seller is required to retain a copy of the contract only until a deed of conveyance, agreement for deed, or lease is recorded in the office of the clerk of the circuit court in the county wherein the plan is located. If a personal property timeshare plan is being sold, the seller is required to retain a copy of the contract only until a certificate of transfer, agreement for transfer, lease, or other instrument of transfer that fully complies with s. 721.08 is delivered to the purchaser.

(2) A list of all salespersons of the seller and their last known addresses. The names and addresses of such salespersons whose employments terminate shall be retained for 3 years after termination of employment. If the seller has a contract with any entity not owned or controlled by the seller for the sale of the timeshare plan, that entity shall be responsible for maintaining a record of current employees involved in the sale of the timeshare plan and a record of any former employees involved in the sale of such plan within the previous 3 years.

## 721.121 Recordkeeping by resale service providers and lead dealers.

(1) Resale service providers and lead dealers shall maintain the following records for a period of 5 years from the date each piece of personal contact information is obtained:

(a) The name, home address, work address, home telephone number, work telephone number, and cellular telephone number of the lead dealer from which the personal contact information was obtained.

(b) A copy of a current government-issued photographic identification for the lead dealer from which the personal contact information was obtained, such as a driver’s license, passport, or military identification card.

(c) The date, time, and place of the transaction at which the personal contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check.

(d) A copy of all pieces of personal contact information obtained in the exact form and media in which they were received.

(e) If personal contact information was directly researched and assembled by the resale service provider or lead dealer and not obtained from another lead dealer, a complete written description of the sources from which personal contact information was obtained, the methodologies used for researching and assembling it, the items set forth in paragraphs (a) and (b) for the individuals who performed the work, and the date such work was done.

(2) In any civil or criminal action relating to the wrongful possession or wrongful use of personal contact information by a resale service provider or lead dealer, any failure by a resale service provider or lead dealer to produce the records required by subsection (1) shall lead to a presumption that the personal contact information was wrongfully obtained.

(3) Any use by a resale service provider or lead dealer of personal contact information that is wrongfully obtained pursuant to this section shall be considered wrongful use of such personal contact information by the resale service provider or lead dealer, as applicable. Any party who establishes that a resale service provider or lead dealer wrongfully obtained or wrongfully used personal contact information with respect to owners of a timeshare plan or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such resale service provider or lead dealer an amount equal to $1,000 for each owner about whom personal contact information was wrongfully obtained or used. Upon prevailing, the plaintiff in any such action shall also be entitled to recover reasonable attorney fees and costs.

## 721.125 Termination of timeshare plans.—

(1) Unless the timeshare instrument provides otherwise, the vote or written consent, or both, of 60 percent of all voting interests in a timeshare plan may terminate the term of the timeshare plan at any time. If a timeshare plan is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.

(2) If a termination vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination.

(3) (a) If the timeshare property is managed by an owners’ association that is separate from any underlying condominium, cooperative, or homeowners’ association, the termination of a timeshare plan does not change the corporate status of the owners’ association. The owners’ association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this subsection.

1. After termination of a timeshare plan, the board of administration of the owners’ association shall serve as the termination trustee, and in such fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale, proportionate to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

(4) This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination vote or consent required by subsection (1).

## 721.1255 Extension of timeshare plans.—

(1) (a) The Legislature finds that timeshare plans are created as authorized by statute. Most of the older timeshare properties located in this state are based on a condominium structure, and many of these older timeshare properties are approaching the termination dates set forth in their timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties located in this state which have been well-maintained over the years and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature further finds that the public policy of this state requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

(2) (a) Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners’ association may, at any time, extend the term of the timeshare plan. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

(b) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners’ association meeting described in paragraph (a) is 50 percent of all eligible voting interests in the timeshare plan.

(c) The owners’ association meeting held pursuant to paragraph (a) may be held at any time before the termination of the timeshare plan.

(d) The board of administration of the owners’ association may determine that any voting interest that is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless such delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare plan pursuant to this section is valid for up to 3 years and is revocable unless the proxy states it is irrevocable.

(3) If an extension vote or consent pursuant to this section is proposed for a component site of a multisite timeshare plan located in this state, the proposed extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the extension.

## 721.13 Management.

(1) (a) For each timeshare plan, the developer shall provide for a managing entity, which shall be either the developer, a separate manager or management firm, or an owners' association. Any owners’ association shall be created prior to the first closing of the sale of a timeshare interest.

(b) 1. With respect to a timeshare plan which is also regulated under chapter 718 or chapter 719, or which contains a mandatory owners' association, the board of administration of the owners’ association shall be considered the managing entity of the timeshare plan.

2. During any period of time in which such owners’ association has entered into a contract with a manager or management firm to provide some or all of the management services to the timeshare plan, both the board of administration and the manager or management firm shall be considered the managing entity of the timeshare plan and shall be jointly and severally responsible for the faithful discharge of the duties of the managing entity.

3. An owners’ association which is the managing entity of a timeshare plan that includes condominium units or cooperative units shall not be considered a condominium association pursuant to the provisions of chapter 718 or a cooperative association pursuant to the provisions of chapter 719, unless such owners’ association also operates the entire condominium pursuant to s. 718.111 or the entire cooperative pursuant to s. 719.104.

(c) With respect to any timeshare plan other than one described in paragraph (b), any developer shall be considered the managing entity of the timeshare plan unless and until such developer clearly provides in the timeshare instrument that a different party will serve as managing entity, which party has acknowledged in writing that it has accepted the duties and obligations of serving as managing entity. In the event such other party subsequently resigns or otherwise ceases to perform its duties as managing entity, any developer shall again be considered the managing entity until the developer arranges for a new managing entity pursuant to this paragraph.

(d) In the event no one described in paragraph (b) or paragraph (c) is operating and maintaining the timeshare plan, anyone who operates or maintains the timeshare plan shall be considered the managing entity of the timeshare plan.

(e) Any managing entity performing community association management must comply with part VIII of chapter 468.

(2) (a) The managing entity shall act in the capacity of a fiduciary to the purchasers of the timeshare plan. No penalty imposed by the division pursuant to s. 721.26 against any managing entity for breach of fiduciary duty shall be assessed as a common expense of any timeshare plan.

(b) The managing entity shall invest the operating and reserve funds of the timeshare plan in accordance with s. 518.11(1); however, the managing entity shall give safety of capital greater weight than production of income. In no event shall the managing entity invest timeshare plan funds with a developer or with any entity that is not independent of any developer or any managing entity within the meaning of s. 721.05(22), and in no event shall the managing entity invest timeshare plan funds in notes and mortgages related in any way to the timeshare plan.

(c) Failure by a managing entity to obtain and maintain insurance coverage as required under s. 721.165 during any period of developer control of the managing entity shall constitute a breach of the managing entity’s fiduciary duty.

(3) The duties of the managing entity include, but are not limited to:

(a) Management and maintenance of all accommodations and facilities constituting the timeshare plan.

(b) Collection of all assessments for common expenses.

(c) 1. Providing each year to all purchasers an itemized annual budget which shall include all estimated revenues and expenses. The budget shall be in the form required by s. 721.07(5)(t). The budget shall be the final budget adopted by the managing entity for the current fiscal year. The final adopted budget is not required to be delivered if the managing entity has previously delivered a proposed annual budget for the current fiscal year to purchasers in accordance with chapter 718 or chapter 719 and the managing entity includes a description of any changes in the adopted budget with the assessment notice and a disclosure regarding the purchasers’ right to receive a copy of the adopted budget, if desired. The budget shall contain, as a footnote or otherwise, any related party transaction disclosures or notes which appear in the audited financial statements of the managing entity for the previous budget year as required by paragraph (e). A copy of the final budget shall be filed with the division for review within 30 days after the beginning of each fiscal year together with a statement of the number of periods of 7-day annual use availability that exist within the timeshare plan, including those periods filed for sale by the developer but not yet committed to the timeshare plan, for which annual fees are required to be paid to the division under s. 721.27.

2. Notwithstanding anything contained in chapter 718 or chapter 719 to the contrary, the board of administration of an owners' association which serves as the managing entity may from time to time reallocate reserves for deferred maintenance and capital expenditures required by s. 721.07(5)(t) 3.a.(XI) from any deferred maintenance or capital expenditure reserve account to any other deferred maintenance or capital expenditure reserve account or accounts in its discretion without the consent of purchasers of the timeshare plan. Funds in any deferred maintenance or capital expenditure reserve account may not be transferred to any operating account without the consent of a majority of the purchasers of the timeshare plan. The managing entity may from time to time transfer excess funds in any operating account to any deferred maintenance or capital expenditure reserve account without the vote or approval of purchasers of the timeshare plan. In the event any amount of reserves for accommodations and facilities of a timeshare plan containing timeshare licenses or personal property timeshare interests exists at the end of the term of the timeshare plan, such reserves shall be refunded to purchasers on a pro rata basis.

3. With respect to any timeshare plan that has a managing entity that is an owners’ association, reserves may be waived or reduced by a majority vote of those voting interests that are present, in person or by proxy, at a duly called meeting of the owners’ association. If a meeting of the purchasers has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect.

(d) 1. [**(See also: Rule 61B-40.001(1**](#_61B-40.001_Definitions---)**)** Maintenance of all books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser. For purposes of this subparagraph, the books and records of the timeshare plan shall be considered “reasonably available" if copies of the requested portions are delivered to the purchaser or the purchaser's agent within 7 days after the date the managing entity receives a written request for the records signed by the purchaser. The managing entity may charge the purchaser a reasonable fee for copying the requested information not to exceed 25 cents per page. However, any purchaser or agent of such purchaser shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. The custodian shall supply copies of the records where requested and upon payment of the copying fee. No fees other than those set forth in this section may be charged for the providing of, inspection, or examination of books and records. All books and financial records of the timeshare plan must be maintained in accordance with generally accepted accounting practices.

2. If the books and records of the timeshare plan are not maintained on the premises of the accommodations and facilities of the timeshare plan, the managing entity shall inform the division in writing of the location of the books and records and the name and address of the person who acts as custodian of the books and records at that location. In the event that the location of the books and records changes, the managing entity shall notify the division of the change in location and the name and address of the new custodian within 30 days after the date the books and records are moved. The purchasers shall be notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c).

3. The division is authorized to adopt rules which specify those items and matters that shall be included in the books and records of the timeshare plan and which specify procedures to be followed in requesting and delivering copies of the books and records.

4. Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the managing entity may not furnish the name, address, or electronic mail address of any purchaser to any other purchaser or authorized agent thereof unless the purchaser whose name, address, or electronic mail address is requested first approves the disclosure in writing.

(e) **(See also:** [**Rule 61B-40.007**](#_61B-40.007_Financial_Reporting)**)** Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of the Department of Business and Professional Regulation, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of the Department of Business and Professional Regulation. The financial statements required by this section must be prepared on an accrual basis using fund accounting, and must be presented in accordance with generally accepted accounting principles. A copy of the audited financial statements must be filed with the division for review and forwarded to the board of directors and officers of the owners' association, if one exists, no later than 5 calendar months after the end of the timeshare plan's fiscal year. If no owners' association exists, each purchaser must be notified, no later than 5 months after the end of the timeshare plan's fiscal year, that a copy of the audited financial statements is available upon request to the managing entity. Notwithstanding any requirement of s. 718.111(13) ors. 719.104(4), the audited financial statements required by this section are the only annual financial reporting requirements for timeshare condominiums or timeshare cooperatives.

(f) Making available for inspection by the division any books and records of the timeshare plan upon the request of the division. The division may enforce this paragraph by making direct application to the circuit court.

(g) Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.

(h) Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities as provided in the contract and as advertised.

(i) 1. Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037.

2. Submitting to the division the statement of receipts and disbursements regarding the ad valorem tax escrow account as required by s. 192.037(6)(e). The statement of receipts and disbursements must also include a statement disclosing that all ad valorem taxes have been paid in full to the tax collector through the current assessment year, or, if all such ad valorem taxes have not been paid in full to the tax collector, a statement disclosing those assessment years for which there are outstanding ad valorem taxes due and the total amount of all delinquent taxes, interest, and penalties for each such assessment year as of the date of the statement of receipts and disbursements.

(j) Notwithstanding anything contained in chapter 718 or chapter 719 to the contrary, purchasers shall not have the power to cancel contracts entered into by the managing entity relating to a master or community antenna television system, a franchised cable television service, or any similar paid television programming service or bulk rate services agreement.

(4) The managing entity shall maintain among its records and provide to the division upon request a complete list of the names and addresses of all purchasers and owners of timeshare units in the timeshare plan. The managing entity shall update this list no less frequently than quarterly. Pursuant to paragraph (3)(d), the managing entity may not publish this owner's list or provide a copy of it to any purchaser or to any third party other than the division. However, the managing entity shall mail to those persons listed on the owner's list materials provided by any purchaser, upon the written request of that purchaser, if the purpose of the mailing is to advance legitimate owners’ association business, such as a proxy solicitation for any purpose, including the recall of one or more board members elected by the owners or the discharge of the manager or management firm. The use of any proxies solicited in this manner must comply with the provisions of the timeshare instrument and this chapter. A mailing requested for the purpose of advancing legitimate owners’ association business shall occur within 30 days after receipt of a request from a purchaser. The board of administration of the owners’ association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection. The purchaser who requests the mailing must reimburse the owners’ association in advance for the owners’ association's actual costs in performing the mailing. It shall be a violation of this chapter and, if applicable, of pt. VIII of chapter 468, for the board of administration or the manager or management firm to refuse to mail any material requested by the purchaser to be mailed, provided the sole purpose of the materials is to advance legitimate owners’ association business. If the purpose of the mailing is a proxy solicitation to recall one or more board members elected by the owners or to discharge the manager or management firm and the managing entity does not mail the materials within 30 days after receipt of a request from a purchaser, the circuit court in the county where the timeshare plan is located may, upon application from the requesting purchaser, summarily order the mailing of the materials solely related to the recall of one or more board members elected by the owners or the discharge of the manager or management firm. The court shall dispose of an application on an expedited basis. In the event of such an order, the court may order the managing entity to pay the purchaser’s costs, including attorney fees reasonably incurred to enforce the purchaser's rights, unless the managing entity can prove it refused the mailing in good faith because of a reasonable basis for doubt about the legitimacy of the mailing.

(5) Any managing entity, or individual officer, director, employee, or agent thereof, who willfully misappropriates the property or funds of a timeshare plan commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof.

(6) (a) The managing entity of any timeshare plan located in this state, including, but not limited to, those plans created with respect to a condominium pursuant to chapter 718 or a cooperative pursuant to chapter 719, may deny the use of the accommodations and facilities of the timeshare plan, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods in a floating reservation timeshare plan, to any purchaser who is delinquent in the payment of any assessments made by the managing entity against such purchaser for common expenses or for ad valorem real estate taxes pursuant to this chapter or pursuant to s. 192.037. Such denial of use shall also extend to those parties claiming under the delinquent purchaser described in paragraphs (b) and (c). For purposes of this subsection, a purchaser shall be considered delinquent in the payment of a given assessment only upon the expiration of 60 days after the date the assessment is billed to the purchaser or upon the expiration of 60 days after the date the assessment is due, whichever is later. For purposes of this subsection, an affiliated exchange program shall be any exchange program which has a contractual relationship with the creating developer or the managing entity of the timeshare plan, or any exchange program that notifies the managing entity in writing that it has members that are purchasers of the timeshare plan, and the exchange companies operating such affiliated exchange programs shall be affiliated exchange companies. Any denial of use for failure to pay assessments shall be implemented only pursuant to this subsection.

(b) A managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to a delinquent purchaser and to those claiming under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, shall, no less than 30 days after the date the assessment is due in accordance with the timeshare instrument, notify the purchaser in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare plan or by law and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated effective date of the notice and the first date of use. The notice shall also clearly state that the purchaser will not be permitted to use his or her timeshare period, that the purchaser will not be permitted to make a reservation in the timeshare plan’s reservation system, or that any confirmed reservation may be canceled, as applicable, until the total amount of such delinquency is satisfied in full or until the purchaser produces satisfactory evidence that the delinquency does not exist. The notice shall be mailed to the purchaser at his or her last known address as recorded in the books and records of the timeshare plan, and the notice shall be effective to bar the use of the purchaser and those claiming use rights under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, until such time as the purchaser is no longer delinquent. The notice shall not be effective to bar the use of third parties receiving use rights in the timeshare period in question through an affiliated exchange program without the additional notice to the affiliated exchange program required by paragraph (c).

(c) In addition to giving notice to the delinquent purchaser as required by paragraph (b), a managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to third parties receiving use rights in the delinquent purchaser's timeshare period through any affiliated exchange program shall notify the affiliated exchange company in writing of the denial of use. The receipt of such written notice by the affiliated exchange company shall be effective to bar the use of all third parties claiming through the affiliated exchange program, and such notice shall be binding upon the affiliated exchange company and all third parties claiming through the affiliated exchange program until such time as the affiliated exchange company receives notice from the managing entity that the purchaser is no longer delinquent. However, any third party claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent purchaser's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of such written notice from the managing entity shall be permitted by the managing entity to use the accommodations and facilities of the timeshare plan to the same extent that he or she would be allowed to use such accommodations and facilities if the delinquent purchaser were not delinquent.

(d) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of paragraphs (b) and (c), together with any costs reasonably incurred by an affiliated exchange company in connection with its compliance with the requirements of paragraph (c), may be assessed by the managing entity against the delinquent purchaser and collected in the same manner as if such costs were common expenses of the timeshare plan allocable solely to the delinquent purchaser. The costs incurred by the affiliated exchange company shall be collected by the managing entity as the agent for the affiliated exchange company. In no event shall the total costs to be assessed against the delinquent purchaser pursuant to this paragraph at any one time exceed 5 percent of the total amount of delinquency contained in the notice given to the delinquent purchaser pursuant to paragraph (b) per timeshare period or $15 per timeshare period, whichever is less.

(e) An exchange company may elect to deny exchange privileges to any member whose use of the accommodations and facilities of the member's timeshare plan is denied pursuant to paragraph (b), and no exchange program or exchange company shall be liable to any of its members or third parties on account of any such denial of exchange privileges.

(f) 1. Provided that the managing entity has properly and timely given notice to a delinquent purchaser pursuant to paragraph (b) and to any affiliated exchange program pursuant to paragraph (c), the managing entity may give further notice to the delinquent purchaser that it may rent the delinquent purchaser's timeshare period, or any use rights appurtenant thereto, and will apply the proceeds of such rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals, to the delinquent purchaser's account. Such further notice of intent to rent must be given at least 30 days prior to the first day of the purchaser's use period, and must be delivered to the purchaser in the manner required for notices under paragraph (b). A managing entity may make a reasonable determination regarding the priority of rentals of timeshare periods to be rented pursuant to this paragraph and, in the event that the delinquent purchaser of a timeshare period rented pursuant to this paragraph cannot be specifically determined due to the structure of the timeshare plan, may allocate such net rental proceeds by the managing entity in any reasonable manner.

2. The notice of intent to rent, which may be included in the notice required by paragraph (b), must state in conspicuous type that:

a. The managing entity's efforts to secure a rental will not commence on a date earlier than 10 days after the date of the notice of intent to rent.

b. Unless the purchaser satisfies the delinquency in full, or unless the purchaser produces satisfactory evidence that the delinquency does not exist pursuant to paragraph (b), the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the purchaser's timeshare period or appurtenant use rights.

c. The purchaser will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency pursuant to this paragraph, and the managing entity shall not be required to provide any further notice to the purchaser regarding any residual delinquency pursuant to this paragraph.

3. In securing a rental pursuant to this paragraph, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare period; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshare periods or use rights generally secured at that time. Alternatively, the managing entity may rent such units at a bulk rate that is below the rate described above but not less than $200 per week, which amount may be prorated for daily rentals.

(g) A managing entity shall have breached its fiduciary duty described in subsection (2) in the event it enforces the denial of use pursuant to paragraph (b) against any one purchaser or group of purchasers without similarly enforcing it against all purchasers, including all developers and owners of the underlying fee or underlying personal property; however, a managing entity shall not be required to solicit rentals pursuant to paragraph (f) for every delinquent purchaser. A managing entity shall also have breached its fiduciary duty in the event an error in the books and records of the timeshare plan results in a denial of use pursuant to this subsection of any purchaser who is not, in fact, delinquent. In addition to any remedies otherwise available to purchasers of the timeshare plan arising from such breaches of fiduciary duty, such breach shall also constitute a violation of this chapter. In addition, any purchaser receiving a notice of delinquency pursuant to paragraph (b), or any third party claiming under such purchaser pursuant to paragraph (b), may immediately bring an action for injunctive or declaratory relief against the managing entity seeking to have the notice invalidated on the grounds that the purchaser is not, in fact, delinquent, that the managing entity failed to follow the procedures prescribed by this section, or on any other available grounds. The prevailing party in any such action shall be entitled to recover his or her reasonable attorney fees from the losing party.

(7) Unless the articles of incorporation, the bylaws, or the provisions of this chapter provide for a higher quorum requirement, the percentage of voting interests required to make decisions and to constitute a quorum at a meeting of the members of a timeshare condominium or owners' association shall be 15 percent of the voting interests. If a quorum is not present at any meeting of the owners’ association at which members of the board of administration are to be elected, the meeting may be adjourned and reconvened within 90 days for the sole purpose of electing members of the board of administration, and the quorum for such adjourned meeting shall be 15 percent of the voting interests. This provision shall apply notwithstanding any provision of chapter 718 or chapter 719 to the contrary.

(8) Notwithstanding anything to the contrary in s. 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of administration of any owners’ association that operates a timeshare condominium pursuant to s. 718.111, or a timeshare cooperative pursuant to s. 719.104, shall have the power to make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners’ association. However, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, such action by the board of administration must be approved by a majority of the owners of such residential units. Unless otherwise provided in the timeshare instrument as originally recorded, no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners’ association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.

(9) All notices or other information sent by a board of administration of an owners’ association may be delivered to a purchaser by electronic mail, provided that the purchaser first consents electronically to the use of electronic mail for notice purposes in a manner that reasonably demonstrates that the purchaser has the ability to access the notice by electronic mail. The consent to receive notice by electronic mail is effective until revoked by the purchaser. Proxies or written consents on votes of any owners’ association may be received by electronic mail, shall have legal effect, and may be utilized for votes of an owners’ association, provided that the electronic signature is authenticated through use of a password, cryptography software, or other reasonable means and that proof of such authentication is made available to the board of directors.

(10) Any failure of the managing entity to faithfully discharge the fiduciary duty to purchasers imposed by this section or to otherwise comply with the provisions of this section shall be a violation of this chapter and of part VIII of chapter 468.

(11) Notwithstanding the other provisions of this section, personal property timeshare plans are only subject to the provisions of subsections (1)(a)-(d), (2)(a), (3)(a)-(h), (5), (6), (9), and (10).

(12)(a) In addition to any other rights granted by the rules and regulations of the timeshare plan, the managing entity of a timeshare plan is authorized to manage the reservation and use of accommodations using those processes, analyses, procedures, and methods that are in the best interests of the owners as a whole to efficiently manage the timeshare plan and encourage the maximum use and enjoyment of the accommodations and other benefits made available through the timeshare plan. The managing entity shall have the right to forecast anticipated reservation and use of the accommodations, including the right to take into account current and previous reservation and use of the accommodations, information about events that are scheduled to occur, seasonal use patterns, and other pertinent factors that affect the reservation or use of the accommodations. In furtherance of the provisions of this subsection, the managing entity is authorized to reserve accommodations, in the best interests of the owners as a whole, for the purposes of depositing such reserved use with an affiliated exchange program or renting such reserved accommodations in order to facilitate the use or future use of the accommodations or other benefits made available through the timeshare plan.

(b) A statement in conspicuous type, in substantially the following form, shall appear in the public offering statement as provided in s. 721.07:

The managing entity shall have the right to forecast anticipated reservation and use of the accommodations of the timeshare plan and is authorized to reasonably reserve, deposit, or rent the accommodations for the purpose of facilitating the use or future use of the accommodations or other benefits made available through the timeshare plan.

(c) The managing entity shall maintain copies of all records, data, and information supporting the processes, analyses, procedures, and methods utilized by the managing entity in its determination to reserve accommodations of the timeshare plan pursuant to this subsection for a period of 5 years from the date of such determination. In the event of an investigation by the division for failure of a managing entity to comply with this subsection, the managing entity shall make all such records, data, and information available to the division for inspection, provided that if the managing entity complies with the provisions of s. 721.071, any such records, data, and information provided to the division shall constitute a trade secret pursuant to that section.

(13) Notwithstanding any provisions of chapter 607, chapter 617, or chapter 718, an officer, director, or agent of an owners’ association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the owners’ association. An officer, director, or agent of an owners’ association shall be exempt from liability for monetary damages in the same manner as provided in s. 617.0834 unless such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

## 721.14 Discharge of managing entity.

(1) If timeshare estates are being sold to purchasers of a timeshare plan, any contract between the owners' association and a manager or management firm shall be automatically renewable every 3 years, beginning with the third year after the owners' association is first created, unless the purchasers vote to discharge the manager or management firm. Such a vote shall be conducted by the board of administration of the owners' association. The manager or management firm shall be deemed discharged if at least 66 percent of the purchasers voting, which shall be at least 50 percent of all votes allocated to purchasers, vote to discharge.

(2) In the event the manager or management firm is discharged, the board of administration of the owners' association shall remain responsible for operating and maintaining the timeshare plan pursuant to the timeshare instrument and s. 721.13(1). If the board of administration fails to do so, any timeshare owner may apply to the circuit court within the jurisdiction of which the accommodations and facilities lie for the appointment of a receiver to manage the affairs of the owners’ association and the timeshare plan. At least 30 days before applying to the circuit court, the timeshare owner shall mail to the owners’ association and post in a conspicuous place on the timeshare property a notice describing the intended action. If a receiver is appointed, the owners’ association shall be responsible as a common expense of the timeshare plan, for payment of the salary and expenses of the receiver, relating to the discharge of her or his duties and obligations as receiver, together with the receiver's court costs, and reasonable attorney fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until discharged by the circuit court.

(3) The managing entity of a timeshare plan subject to the provisions of chapter 718 or chapter 719 may be discharged pursuant to chapter 718 or chapter 719, respectively, or its successor or pursuant to this section.

(4) (a) An owners’ association and a manager or management firm may, in the management contract or other written document, agree to the transition procedures and related time periods to be followed in the event the manager or management firm is discharged pursuant to this section. If there is no written agreement between the parties that covers the matters set forth in paragraphs (b) and (c), the provisions of paragraphs (b) and (c) shall apply.

(b) Within 90 days after the date that the manager or management firm is notified by the owners’ association of a successful termination vote pursuant to subsection (1), the terminated managing entity shall transfer to the owners’ association or new manager or management firm all relevant data held by the managing entity and related to any reservation system for the timeshare plan, including, but not limited to:

1. The names, addresses, and reservation status of all accommodations.

2. The names and addresses of all purchasers of timeshare interests.

3. All outstanding confirmed reservations and reservation requests.

4. Such other records and information as is necessary to permit the uninterrupted operation and administration of the timeshare plan. However, the information required to be transferred does not include private information of the terminated managing entity that is not directly related to operation and management of the timeshare plan.

(c) All reasonable costs incurred by the terminated managing entity in effecting the transfer of information required by this subsection shall be reimbursed to the terminated managing entity as a common expense of the timeshare plan within 10 days after the completed transfer of the data described in paragraph (b).

## 721.15 Assessments for common expenses.

(1) (a) Until a managing entity is created or provided pursuant to s. 721.13, the developer shall pay all common expenses. The timeshare instrument shall provide for the allocation of common expenses among all timeshare units or timeshare interests on a reasonable basis, including timeshare interests owned or not yet sold by the developer. The timeshare instrument may provide that the common expenses allocated may differ between those timeshare units that are part of the timeshare plan and those units that are not part of the timeshare plan; however, the different proportion of expenses must be based upon reasonable differences in the benefit provided to each. The timeshare instrument shall allocate common expenses to timeshare interests owned or not yet sold by the developer on the same basis that common expenses are allocated to similar or equivalent timeshare interests sold to purchasers.

(b) Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the allocation of total common expenses for a condominium or a cooperative timeshare plan may vary on any reasonable basis, including, but not limited to, timeshare unit size, timeshare unit type, timeshare unit location, specific identification, or a combination of these factors, if the percentage interest in the common elements attributable to each timeshare condominium parcel or timeshare cooperative parcel equals the share of the total common expenses allocable to that parcel. The share of a timeshare interest in the common expenses allocable to the timeshare condominium parcel or the timeshare cooperative parcel containing such interest may vary on any reasonable basis if the timeshare interest's share of its parcel's common expense allocation is equal to that timeshare interest's share of the percentage interest in common elements attributable to such parcel.

(2) (a) **(**[**See also: Rule 61B-40.005**](#_61B-40.005_Guarantee_of)**)**After the creation or provision of a managing entity, the managing entity shall make an annual assessment against each purchaser for the payment of common expenses, based on the projected annual budget, in the amount specified by the contract between the seller and the purchaser or in the timeshare instrument.

(b) No owner of a timeshare interest may be excused from the payment of her or his share of the common expenses unless all owners are likewise excused from payment, except that the developer may be excused from the payment of her or his share of the common expenses which would have been assessed against her or his timeshare interests during a stated period of time during which the developer has guaranteed to each purchaser in the timeshare instrument, or by agreement between the developer and a majority of the owners of timeshare interests other than the developer, that the assessment for common expenses imposed upon the owners would not increase over a stated dollar amount. In the event of such a guarantee, the developer is obligated to pay all common expenses incurred during the guarantee period in excess of the total revenues of the timeshare plan. Notwithstanding this limitation, if a developer- controlled owners’ association has maintained all insurance coverages required by s. 721.165, the common expenses incurred during the guarantee period resulting from a natural disaster or an act of God, which are not covered by insurance proceeds from the insurance maintained by the owners’ association, may be assessed against all purchasers owning timeshare interests on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to timeshare interests owned by the developer. In the event of such an assessment, all timeshare interests shall be assessed in accordance with their ownership interest as required by paragraph (1)(a).

(c) For the purpose of calculating the obligation of a developer under a guarantee pursuant to paragraph (b), amounts expended for any insurance coverage required by law or by the timeshare instrument to be maintained by the owners’ association and depreciation expenses related to real property shall be excluded from common expenses incurred during the guarantee period, except that for real property that is used for the production of fees, revenues, or other income, depreciation expenses shall be excluded only to the extent that they exceed the net income from the production of such fees, revenues, or other income. Any special assessment imposed for amounts excluded from the developer guarantee pursuant to this paragraph shall be paid proportionately by all owners of timeshare interests, including the developer with respect to the timeshare interests owned by the developer, in accordance with the timeshare instrument.

(d) A guarantee pursuant to paragraph (b) may provide that the developer may extend or increase the guarantee for one or more additional stated periods.

(3) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to such interest, the managing entity may charge an administrative late fee in an amount not to exceed $25 for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney fees, incurred in the collection of a delinquent assessment shall be paid by the purchaser and shall be secured by a lien in favor of the managing entity upon the timeshare interest with respect to which the delinquent assessment has been incurred; however, in the event that a managing entity turns the matter over to a collection agency, the managing entity must advise the purchaser at least 60 days prior to turning the matter over to the collection agency that the purchaser may be liable for the fees of the collection agency and that a lien may result therefrom.

(4) Unless otherwise specified in the contract between the seller and the purchaser, any common expenses benefiting fewer than all purchasers shall be assessed only against those purchasers benefited.

(5) Any assessments for common expenses which have not been spent for common expenses during the year for which such assessments were made shall be shown as an item on the annual budget.

(6) Notwithstanding any contrary requirements of s. 718.112(2)(g) or s. 719.106(1)(g), for timeshare plans subject to this chapter, assessments against purchasers need not be made more frequently than annually.

(7) (a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor. The predecessor in interest or his or her agent, or a person providing resale transfer services for the predecessor in interest pursuant to s. 721.17(3) or his or her agent, shall deliver to the managing entity with a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery the successor in interest shall be listed by the managing entity as the owner of the timeshare interest on the books and records of the timeshare plan.. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest. (b) Within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller pursuant to s. 721.17(3), a managing entity must provide a certificate, signed by an officer or agent of the managing entity, to the person requesting the certificate, that states the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and of any assessment, transfer fee, or other moneys approved by the managing entity that will be due within the next 90 days, with respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.

1. A person who relies upon such certificate shall be protected thereby.

2. A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this paragraph, and in such an action the prevailing party may recover reasonable attorney fees and court costs.

3. The managing entity may charge a fee not to exceed $150 for the preparation and delivery of the certificate. The amount of the fee must be included on the certificate.

(8) Notwithstanding the provisions of subsection (7), a first mortgagee or its successor or assignee who acquires title to a timeshare interest as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare interest or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee.

(9) (a) Anything contained in chapter 718 or chapter 719 to the contrary notwithstanding, the managing entity of a timeshare plan shall not commingle operating funds with reserve funds; however, the managing entity may maintain operating and reserve funds within a single account for a period not to exceed 30 days after the date on which the managing entity received payment of such funds.

(b) Anything contained in chapter 718 or chapter 719 to the contrary notwithstanding, a managing entity which serves as managing entity of more than one timeshare plan, or of more than one component site pursuant to part II, shall not commingle the common expense funds of any one timeshare plan or component site with the common expense funds of any other timeshare plan or component site. However, the managing entity may maintain common expense funds of multiple timeshare plans or multiple component sites within a single account for a period not to exceed 30 days after the date on which the managing entity received payment of such funds.

(10) This section shall not apply to personal property timeshare plans.

(11) Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, any determination by a timeshare association of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude anticipated expenses for insurance coverage required by law or by the timeshare instrument to be maintained by the association.

## 721.16 Liens for overdue assessments; liens for labor performed on, or materials furnished to, a timeshare unit.

(1) The managing entity has a lien on a timeshare interest for any assessment levied against that timeshare interest from the date such assessment becomes due. The managing entity also has a lien on a timeshare interest of any purchaser for the cost of any maintenance, repairs, or replacement resulting from an act of such purchaser or purchaser's guest that results in damage to the timeshare property or facilities made available to the purchasers.

(2) The managing entity may bring a judicial action in its name to foreclose a lien under subsection (1) in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity may initiate a trustee procedure to foreclose an assessment lien under s. 721.855.

(3) The lien is effective from the date of recording a claim of lien in the official records of the county or counties in which the timeshare interest is located. The claim of lien shall state the name of the timeshare plan and identify the timeshare interest for which the lien is effective, state the name of the purchaser, state the assessment amount due, and state the due dates. Notwithstanding any provision of s. 718.116(5) or s. 719.108(4) to the contrary, the lien is effective until satisfied or until 5 years have expired after the date the claim of lien is recorded unless, within that time, an action to enforce the lien is commenced pursuant to subsection (2). A claim of lien for assessments may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.

(4) A judgment in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

(5) Labor performed on a timeshare unit, or materials furnished to a timeshare unit, shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the timeshare unit of any timeshare-period owner not expressly consenting to or requesting the labor or materials.

(6) This section shall not apply to personal property timeshare plans.

## 721.165 Insurance.

(1) Notwithstanding any provision contained in the timeshare instrument or in this chapter, chapter 718, or chapter 719 to the contrary, the managing entity shall use due diligence to obtain adequate casualty insurance as a common expense of the timeshare plan to protect the timeshare property against all reasonably foreseeable perils, in such covered amounts and subject to such reasonable exclusions and reasonable deductibles as are consistent with the provisions of this section

(2) In making the determination as to whether the insurance obtained pursuant to subsection (1) is adequate, the managing entity shall take into account the following factors, among others as may be applicable:

(a) Available insurance coverages and related premiums in the marketplace.

(b) Amounts of any related deductibles, types of exclusions, and coverage limitations; provided that, for purposes of this paragraph, a deductible of 5 percent or less shall be deemed to be reasonable per se.

(c) The probable maximum loss relating to the insured timeshare property during the policy term.

(d) The extent to which a given peril is insurable under commercially reasonable terms.

(e) Amounts of any deferred maintenance or replacement reserves on hand.

(f) Geography and any special risks associated with the location of the timeshare property.

(g) The age and type of construction of the timeshare property.

(3) Notwithstanding any provision contained in this section or in the timeshare instrument to the contrary, insurance shall be procured and maintained by the managing entity for the timeshare property as a common expense of the timeshare plan against such perils, in such coverages, and subject to such reasonable deductions or reasonable exclusions as may be required by:

(a) An institutional lender to a developer, for so long as such lender holds a mortgage encumbering any interest in or lien against a portion of the timeshare property; or

(b) Any holder or pledgee of, or any institutional lender having a security interest in, a pool of promissory notes secured by mortgages or other security interests relating to the timeshare plan, executed by purchasers in connection with such purchasers’ acquisition of timeshare interests in such timeshare property, or any agent, underwriter, placement agent, trustee, servicer, custodian, or other portfolio manager acting on behalf of such holder, pledgee, or institutional lender, for so long as any such notes and mortgages or other security interests remain outstanding.

(4) Notwithstanding any provision contained in the timeshare instrument or in this chapter, chapter 718, or chapter 719 to the contrary, the managing entity is authorized to apply any existing reserves for deferred maintenance and capital expenditures toward payment of insurance deductibles or the repair or replacement of the timeshare property after a casualty without regard to the purposes for which such reserves were originally established.

(5) A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

## 721.17 Transfer of interest.

(1) Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer, owner of the underlying fee, or owner of the underlying personal property shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations and facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which such accommodations and facilities are located or, with respect to personal property timeshare plans, in full compliance with s. 721.08. The instrument shall be executed by both the transferor and transferee and shall state:

(a) That its provisions are intended to protect the rights of all purchasers of the plan.

(b) That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(c) That so long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, the transferee shall honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

(d) That the transferee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds.

(e) That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

(2) Should any transfer of the interest of the developer, the owner of the underlying fee, or the owner of the underlying property occur in a manner which is not in compliance with subsection (1), the terms set forth in subsection (1) shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days after the transfer unless such transfer does not affect the purchaser’s rights in or use of the timeshare plan. Persons who hold mortgages or liens on the property constituting a timeshare plan before the filed public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of subsection (1).

(3) (a) In the course of offering timeshare interest transfer services, no person shall:

1. Engage in any timeshare interest transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written resale transfer agreement signed by the consumer timeshare reseller that complies with this subsection.

2. Fail to provide both the consumer timeshare reseller and the escrow agent required by paragraph (c) with an executed copy of the resale transfer agreement.

3. Fail to comply with the requirements of paragraphs (b) and (c).

(b) Each resale transfer agreement shall contain:

1. A statement that no fee, cost, or other compensation may be paid to the person providing the timeshare resale transfer services before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare interest transfer services have been performed, including, but not limited to, delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee, accompanied by the full name, address, and other known contact information for the transferee.

2. The name, address, current phone number, and current e-mail address of the escrow agent required by paragraph (c).

3. A statement that the person providing the timeshare resale transfer services will provide the consumer timeshare reseller with written notice of the full performance of the timeshare resale transfer services, together with a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest from the consumer timeshare reseller to a transferee.

4. A statement in substantially the following form in conspicuous type immediately preceding the space in the resale transfer agreement provided for the consumer timeshare reseller’s signature:

…(Name)… has agreed to provide you with timeshare resale transfer services pursuant to this resale transfer agreement. After those services have been fully performed, …(Name)… is obligated to provide you with written notice of such full performance and a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee. Any fee or other compensation paid by you under this agreement before such full performance by …(Name)… must be held in escrow by the escrow agent specified in this agreement, and …(Name)… is prohibited from receiving any such fee or other compensation until all promised timeshare interest transfer services have been performed.

(c) 1. Before entering into any resale transfer agreement, a person providing timeshare resale transfer services shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. An attorney who is a member in good standing of The Florida Bar, a licensed Florida real estate broker in good standing, or a licensed Florida title insurer or agent in good standing, any of whom also provides timeshare interest transfer services as described in this subsection, may serve as escrow agent under this subsection. The escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller’s funds or other property from escrow only in accordance with this subsection.

2. All funds or other property that are received from or on behalf of a consumer timeshare reseller pursuant to a resale transfer agreement shall be deposited into an escrow account pursuant to this paragraph. A fee, cost, or other compensation that is due or that will be paid to the person providing the timeshare resale transfer services must be held in such escrow account until the person providing the timeshare resale transfer services has fully complied with all of his or her obligations under the resale transfer agreement and under this subsection.

3. The funds or other property required to be escrowed pursuant to this paragraph may only be released from escrow as follows:

a. On the order of the person providing the timeshare resale transfer services upon presentation of an affidavit by the person that all promised timeshare interest transfer services have been performed, including delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee.

b. To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s. 721.15(7)(b) or to pay a governmental agency for the purpose of completing and perfecting the transfer. A managing entity shall accept any funds remitted to it by an escrow agent pursuant to this sub-subparagraph.

4. The escrow agent shall retain all resale transfer agreements, escrow account records, and affidavits received pursuant to this subsection for a period of 5 years.

(d) A person providing timeshare resale transfer services, an agent or third party service provider for the timeshare resale transfer services provider, or an escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) o person shall participate, for consideration or with the expectation of consideration, in a plan or scheme, a purpose of which is to transfer a consumer resale timeshare interest to a transferee that the person knows does not have the ability, means, or intent to pay all assessments and taxes associated with the consumer resale timeshare interest.

(f) Providing timeshare interest transfer services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(g) A managing entity may bring an action to enforce the provisions of paragraph (e). In any such action, the managing entity may recover its actual damages, and the prevailing party may recover its reasonable attorney fees and court costs.

(h) Paragraphs (a)-(d) do not apply to:

1. A resale broker who offers timeshare interest transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with chapter 475 and with s. 721.20; or 2. An attorney who is a member in good standing of The Florida Bar or a licensed Florida title insurer or agent in good standing who offers timeshare interest transfer services to a consumer timeshare reseller, if the total consideration paid by the consumer timeshare reseller to such person does not exceed $600, exclusive of any assessments, transfer fees, or moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s.721.15(7)(b), and exclusive of any fees owed to a governmental agency for the purpose of completing and perfecting the transfer.

(i) This subsection does not apply to the transfer of ownership of a consumer resale timeshare interest from a consumer timeshare reseller to the developer or managing entity of that timeshare plan.

## 721.18 Exchange programs; filing of information and other materials; filing fees; unlawful acts in connection with an exchange program.

(1) If a purchaser is offered the opportunity to subscribe to an exchange program, the seller shall deliver to the purchaser, together with the purchaser public offering statement, and prior to the offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program; or, if the exchange company is dealing directly with the purchaser, the exchange company shall deliver to the purchaser, prior to the initial offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program. In either case, the purchaser shall certify in writing to the receipt of such information. Such information shall include, but is not limited to, the following information, the form and substance of which shall first be approved by the division in accordance with subsection (2):

(a) The name and address of the exchange company.

(b) The names of all officers, directors, and shareholders of the exchange company.

(c) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller, or managing entity for any timeshare plan participating in the exchange program and, if so, the name and location of the timeshare plan and the nature of the interest.

(d) Unless otherwise stated, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of the timeshare plan.

(e) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the timeshare plan with the exchange program.

(f) A statement that the purchaser's participation in the exchange program is voluntary. This statement is not required to be given by the seller or managing entity of a multisite timeshare plan to purchasers in the multisite timeshare plan.

(g) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.

(h) A complete and accurate description of the procedure to qualify for and effectuate exchanges.

(i) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, timeshare unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied.

(j) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program.

(k) Whether and under what circumstances a purchaser, in dealing with the exchange program, may lose the use and occupancy of her or his timeshare period in any properly applied for exchange without her or his being provided with substitute accommodations by the exchange program.

(l) The fees or range of fees for membership or participation in the exchange program by purchasers, including any conversion or other fees payable to third parties, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made.

(m) The name and address of the site of each timeshare plan participating in the exchange program.

(n) The number of the timeshare units in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51 and over.

(o) The number of currently enrolled purchasers for each timeshare plan participating in the exchange program, expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program.

(p) The disposition made by the exchange company of timeshare periods deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting exchanges.

(q) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported annually:

1. The number of purchasers currently enrolled in the exchange program.

2. The number of accommodations and facilities that have current written affiliation agreements with the exchange program.

3. The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.

4. The number of timeshare periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a timeshare period during the year in exchange for a timeshare period in any future year.

5. The number of exchanges confirmed by the exchange program during the year.

(r) A statement in boldfaced type to the effect that the percentage described in subparagraph (q)3. is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of a purchaser's being confirmed to any specific choice or range of choices.

(2) Each exchange company offering an exchange program to purchasers in this state shall file with the division for review the information specified in subsection (1) and the audit specified in subsection (1), together with any membership agreement and application between the purchaser and the exchange company, and the audit specified in subsection (1) on or before June 1 of each year. However, an exchange company shall make its initial filing at least 20 days prior to offering an exchange program to any purchaser in this state. Each filing shall be accompanied by an annual filing fee of $500. Within 20 days after receipt of such filing, the division shall determine whether the filing is adequate to meet the requirements of this section and shall notify the exchange company in writing that the division has either approved the filing or found specified deficiencies in the filing. If the division fails to respond within 20 days, the filing shall be deemed approved. The exchange company may correct the deficiencies; and, within 10 days after receipt of corrections from the exchange company, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies in the filing. If the exchange company fails to adequately respond to any deficiency notice within 10 days, the division may reject the filing. Subsequent to such rejection, a new filing fee and a new division initial review period pursuant to this subsection shall apply to any refiling or further review of the rejected filing.

(a) Any material change to an approved exchange company filing shall be filed with the division for approval as an amendment prior to becoming effective. Each amendment filing shall be accompanied by a filing fee of $100. The exchange company may correct the deficiencies; and, within 10 days after receipt of corrections from the exchange company, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies in the filing. Each approved amendment to the approved exchange company filing, other than an amendment that does not materially alter or modify the exchange program in a manner that is adverse to a purchaser, as determined by the exchange company in its reasonable discretion, shall be delivered to each purchaser who has not closed. An approved exchange program filing is required to be updated with respect to added or deleted resorts only once each year, and such annual update shall not be deemed to be a material change to the filing.

(b) If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of s. 721.26.

(3) No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(4) At the request of the exchange company, the division shall review any audio, written, or visual publications or materials relating to an exchange company or an exchange program filed for review by the exchange company and shall notify the exchange company of any deficiencies within 10 days after the filing. If the exchange company corrects the deficiencies, or if there are no deficiencies, the division shall notify the exchange company of its approval of the advertising materials. If the exchange company fails to adequately respond to any deficiency notice within 10 days, the division may reject the advertising materials. Subsequent to such rejection, a new division initial review period pursuant to this subsection shall apply to any refiling or further review.

(5) The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

## 721.19 Provisions requiring purchase or lease of timeshare property by owners' association or purchasers; validity.

In any timeshare plan in which timeshare estates or personal property timeshare interests are sold, no grant or reservation made by a declaration, lease, or other document, nor any contract made by the developer, managing entity, or owners' association, which requires the owners' association or purchasers to purchase or lease any portion of the timeshare property shall be valid unless approved by a majority of the purchasers other than the developer, after more than 50 percent of the timeshare periods have been sold.

## 721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.

Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(1) Any seller of a timeshare plan must be a licensed real estate broker, broker associate, or sales associate as defined in s. 475.01, except as provided in s. 475.011.

(2) Solicitors who engage only in the solicitation of prospective purchasers, and any purchaser who refers no more than 20 people to a developer or managing entity per year or who otherwise provides testimonials on behalf of a developer or managing entity are exempt from the provisions of chapter 475.

(3) A solicitor who has violated the provisions of chapter 468, chapter 718, chapter 719, this chapter, or the rules of the division governing timesharing shall be subject to the provisions of s. 721.26. Any developer or other person who supervises, directs, or engages the services of a solicitor shall be liable for any violation of the provisions of chapter 468, chapter 718, chapter 719, this chapter, or the rules of the division governing timesharing committed by such solicitor.

(4) County and municipal governments shall have the authority to adopt codes of conduct and regulations to govern solicitor activity conducted on public property, including providing for the imposition of penalties prescribed by a schedule of fines adopted by ordinance for violations of any such code of conduct or regulation. Any violation of any such adopted code of conduct or regulation shall not constitute a separate violation of this chapter. This subsection is not intended to restrict or invalidate any local code of conduct or regulation.

(5) This section does not apply to those individuals who offer for sale only timeshare interests in timeshare property located outside this state and who do not engage in any sales activity within this state or to timeshare plans which are registered with the Securities and Exchange Commission. For the purposes of this section, both timeshare licenses and timeshare estates are considered to be interests in real property.

(6) It is unlawful for any real estate broker, broker associate, or sales associate to collect any advance fee for the listing of any timeshare estate or timeshare license.

(7) It is unlawful for any broker, salesperson, or broker-salesperson to collect any advance fee for the listing of a personal property timeshare interest.

(8) Subsections (1), (2), and (3) do not apply to persons who offer personal property timeshare plans.

(9) A person who meets the definition of a commercial telephone seller or salesperson as defined in s. 501.603 must be licensed under part IV of chapter 501 before doing business in this state under this chapter.

Section 48. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **721.205 Resale service providers; disclosure obligations.—**

(1) (a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller:

1. A description of any fees or costs related to such services that the consumer timeshare reseller, or any other person, is required pay to the resale service provider or to any third party.

2. A description of when such fees or costs are due.

(b) A resale service provider may not engage in those activities described in s. 475.01(1)(a) without being the holder of a valid and current active license in accordance with chapter 475.

(2) In the course of offering resale advertising services, a resale advertiser may not:

(a) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent by the consumer timeshare reseller.

(b) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of such represented interested resale purchaser.

(c) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making such representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshare interests, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshare interests that have resulted in a sale versus the number of timeshare interests advertised for sale by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshare interests that have actually resulted in a rental versus the number of timeshare interests advertised for rental by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a rental or rentals.

(d) State or imply to a consumer timeshare reseller that the timeshare interest has a specific resale value.

(e) Make or submit any charge to a consumer timeshare reseller’s credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller that exceeds an aggregate total amount of $75 or more in any 12-month period until after the resale advertiser has received a written contract complying in all respects with paragraph (f) that has been signed by the consumer timeshare reseller.

(f) Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written contract to provide such services signed by the consumer timeshare reseller. Notwithstanding any other law, the contract must be printed in at least 12-point type and must contain the following information:

1. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a contract cancellation notice may be delivered at the consumer timeshare reseller’s election.

2. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which the consumer resale timeshare interest will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer timeshare reseller of each resale advertising service to be provided; and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

3. A statement printed in at least 12-point boldfaced type immediately preceding the space in the contract provided for the consumer timeshare reseller’s signature in substantially the following form:

TIMESHARE OWNER’S RIGHT OF CANCELLATION

(Name of resale advertiser) will provide resale advertising services pursuant to this contract. If (name of resale advertiser) represents that (name of resale advertiser) has identified a person who is interested in purchasing or renting your timeshare interest, then (name of resale advertiser) must provide you with the name, address, and telephone number of such represented interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale advertiser) in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (resale advertiser’s physical address) or to (resale advertiser’s e-mail address) . Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later.

You are not obligated to pay (name of resale advertiser) any money unless you sign this contract and return it to (name of resale advertiser) .

IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

4. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with s. 721.065, including the provision of a 10-day cancellation period for the prospective consumer resale purchaser.

(g) Make or submit any charge to a consumer timeshare reseller’s credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller in an aggregate amount totaling less than $75 in any 12-month period unless the consumer timeshare reseller has been provided a copy of the terms and conditions of the contract provided for in paragraph (f) and the consumer timeshare reseller has agreed to such terms and conditions by mail or electronic transmission.

(h) Fail to honor any cancellation notice sent by the consumer timeshare reseller within 10 days after the date the consumer timeshare reseller signs the contract for resale advertising services in compliance with subparagraph (f)3.

(i) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from a cleared check, whichever is later.

(3) If a resale service provider uses a contract for resale advertising services that fails to comply with subsection (2), such contract shall be voidable at the option of the consumer timeshare reseller for a period of 1 year after the date it is executed by the consumer timeshare reseller.

(4) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(5) Providing resale advertising services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. [48.193](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0048/Sections/0048.193.html)(1).

(6) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(7) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than $15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive trade practice as prohibited by s. [501.204](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0501/Sections/0501.204.html) and is subject to the penalties and remedies provided in part II of chapter 501.

## 721.21 Purchasers' remedies.

An action for damages or for injunctive or declaratory relief for a violation of this chapter may be brought by any purchaser or owners’ association against the developer, a seller, an escrow agent, or the managing entity. The prevailing party in any such action, or in any action in which the purchaser claims a right of voidability based upon either a closing before the expiration of the cancellation period or an amendment which materially alters or modifies the offering in a manner adverse to the purchaser, may be entitled to reasonable attorney fees. Relief under this section does not exclude other remedies provided by law.

## 721.22 Partition.

(1) No action for partition of any timeshare unit shall lie, unless otherwise provided for in the contract between the seller and the purchaser.

(2) If a timeshare estate exists as an estate for years with a future interest, the estate for years shall not be deemed to have merged with the future interest, but neither the estate for years nor the corresponding future interest shall be conveyed or encumbered separately from the other.

## 721.23 Securities.

Timeshare plans are not securities under the provisions of chapter 517 or its successor.

## 721.24 Firesafety.

(1) Any:

(a) Facility or accommodation of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the timeshare unit to exterior means of egress, or

(b) Building over 75 feet in height that has direct access from the timeshare unit to exterior means of egress and for which the construction contract has been let after September 30, 1983,shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 (1985), “Standards for the Installation of Sprinkler Systems." The sprinkler installation may be omitted in closets which are not over 24 square feet in area and in bathrooms which are not over 55 square feet in area, which closets and bathrooms are located in timeshare units. Each timeshare unit shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA-74 (1984), “Standards for the Installation, Maintenance and Use of Household Fire Warning Equipment," powered from the building electrical service, notwithstanding the number of stories in the structure, if the contract for construction is let after September 30, 1983. Single-station smoke detection is not required when a timeshare unit's smoke detectors are connected to a central alarm system which also alarms locally.

(2) Any timeshare unit of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719 which is of three stories or more and for which the construction contract was let before October 1, 1983, shall be equipped with:

(a) A system which complies with subsection (1); or

(b) An approved sprinkler system for all interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms, less individual timeshare units, if the following conditions are met:

1. There is a minimum 1-hour separation between each timeshare unit and between each timeshare unit and a corridor.

2. The building is constructed of noncombustible materials.

3. The egress conditions meet the requirements of s. 5-3 of the Life Safety Code, NFPA 101 (1985).

4. The building has a complete automatic fire detection system which meets the requirements of NFPA-72A (1987) and NFPA-72E (1984), including smoke detectors in each timeshare unit individually annunciating to a panel at a supervised location.

(3) The Division of State Fire Marshal of the Department of Financial Services may prescribe uniform standards for firesafety equipment for timeshare units of timeshare plans for which the construction contracts were let before October 1, 1983. An entire building shall be equipped as outlined, except that the approved sprinkler system may be delayed by the Division of State Fire Marshal until October 1, 1991, on a schedule for complete compliance in accordance with rules adopted by the Division of State Fire Marshal, which schedule shall include a provision for a 1-year extension which may be granted not more than three times for any individual requesting an extension. The entire system must be installed and operational by October 1, 1994. The Division of State Fire Marshal shall not grant an extension for the approved sprinkler system unless a written request for the extension and a construction work schedule is submitted. The Division of State Fire Marshal may grant an extension upon demonstration that compliance with this section by the date required would impose an extreme hardship and a disproportionate financial impact. Any establishment that has been granted an extension by the Division of State Fire Marshal shall post, in a conspicuous place on the premises, a public notice stating that the establishment has not yet installed the approved sprinkler system required by law.

(4) The provisions for installation of single-station smoke detectors required in subsection (1) and subparagraph (2)(b)4. shall be waived by the Division of State Fire Marshal for any establishment for which the construction contract was let before October 1, 1983, and which is under three stories in height, if each individual timeshare unit is equipped with a smoke detector approved by the Division of State Fire Marshal.

(5) The Division of State Fire Marshal shall adopt, in accordance with the provisions of chapter 120, any rules necessary for the implementation and enforcement of this section. The Division of State Fire Marshal shall enforce this section in accordance with the provisions of chapter 633.

(6) Accommodations and facilities of personal property timeshare plans shall be exempt from the requirements of this section.

## 721.25 Zoning and building.

All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of the real estate timeshare plan property, without regard to the form of ownership.

## 721.26 Regulation by division.

The division has the power to enforce and ensure compliance with this chapter, except for parts III and IV, using the powers provided in this chapter, as well as the powers prescribed in chapters 718 and 719. In performing its duties, the division shall have the following powers and duties:

(1) To aid in the enforcement of this chapter, or any division rule adopted or order issued pursuant to this chapter, the division may make necessary public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter, or any division rule adopted or order issued pursuant to this chapter.

(2) The division may require or permit any person to file a written statement under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter under investigation.

(3) For the purpose of any investigation under this chapter, the director of the division or any officer or employee designated by the director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the identity, existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby shall be a violation of this chapter. In addition to the other enforcement powers authorized in this subsection, the division may apply to the circuit court for an order compelling compliance.

(4) The division may prepare and disseminate a prospectus and other information to assist prospective purchasers, sellers, and managing entities of timeshare plans in assessing the rights, privileges, and duties pertaining thereto.

(5) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter, or of any division rule adopted or order issued pursuant to this chapter, has occurred, the division may institute enforcement proceedings in its own name against any regulated party, as such term is defined in this subsection:

(a) 1. “Regulated party," for purposes of this section, means any developer, exchange company, seller, managing entity, owners’ association, owners’ association director, owners’ association officer, manager, management firm, escrow agent, trustee, any respective assignees or agents, or any other person having duties or obligations pursuant to this chapter.

2. Any person who materially participates in any offer or disposition of any interest in, or the management or operation of, a timeshare plan in violation of this chapter or relevant rules involving fraud, deception, false pretenses, misrepresentation, or false advertising or the disbursement, concealment, or diversion of any funds or assets, which conduct adversely affects the interests of a purchaser, and which person directly or indirectly controls a regulated party or is a general partner, officer, director, agent, or employee of such regulated party, shall be jointly and severally liable under this subsection with such regulated party, unless such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts giving rise to the violation of this chapter. A right of contribution shall exist among jointly and severally liable persons pursuant to this paragraph.

(b) The division may permit any person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby an order, rule, or letter of censure or warning, whether formal or informal, may be entered against that person.

(c) The division may issue an order requiring a regulated party to cease and desist from an unlawful practice under this chapter and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

(d) 1. The division may bring an action in circuit court for declaratory or injunctive relief or for other appropriate relief, including restitution.

2. The division shall have broad authority and discretion to petition the circuit court to appoint a receiver with respect to any managing entity which fails to perform its duties and obligations under this chapter with respect to the operation of a timeshare plan. The circumstances giving rise to an appropriate petition for receivership under this subparagraph include, but are not limited to:

a. Damage to or destruction of any of the accommodations or facilities of a timeshare plan, where the managing entity has failed to repair or reconstruct same.

b. A breach of fiduciary duty by the managing entity, including, but not limited to, undisclosed self-dealing or failure to timely assess, collect, or disburse the common expenses of the timeshare plan.

c. Failure of the managing entity to operate the timeshare plan in accordance with the timeshare instrument and this chapter. If, under the circumstances, it appears that the events giving rise to the petition for receivership cannot be reasonably and timely corrected in a cost-effective manner consistent with the timeshare instrument, the receiver may petition the circuit court to implement such amendments or revisions to the timeshare instrument as may be necessary to enable the managing entity to resume effective operation of the timeshare plan, or to enter an order terminating the timeshare plan, or to enter such further orders regarding the disposition of the timeshare property as the court deems appropriate including the disposition and sale of the timeshare property held by the owners’ association or the purchasers. In the event of a receiver’s sale, all rights, title, and interest held by the owners’ association or any purchaser shall be extinguished and title shall vest in the buyer. This provision applies to timeshare estates, personal property timeshare interests, and timeshare licenses. All reasonable costs and fees of the receiver relating to the receivership shall become common expenses of the timeshare plan upon order of the court.

3. The division may revoke its approval of any filing for any timeshare plan for which a petition for receivership has been filed pursuant to this paragraph.

(e) 1. The division may impose a penalty against any regulated party for a violation of this chapter or any rule adopted thereunder. A penalty may be imposed on the basis of each day of continuing violation, but in no event may the penalty for any offense exceed $10,000. All accounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

2. a. If a regulated party fails to pay a penalty, the division shall thereupon issue an order directing that such regulated party cease and desist from further operation until such time as the penalty is paid; or the division may pursue enforcement of the penalty in a court of competent jurisdiction.

b. If an owners’ association or managing entity fails to pay a civil penalty, the division may pursue enforcement in a court of competent jurisdiction.

(f) In order to permit the regulated party an opportunity to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the penalty or the cease and desist order shall not become effective until 20 days after the date of such order.

(g) Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(h) Notice to any regulated party shall be complete when delivered by United States mail, return receipt requested, to the party's address currently on file with the division or to such other address at which the division is able to locate the party. Every regulated party has an affirmative duty to notify the division of any change of address at least 5 business days prior to such change.

(6) **(See also:** [**61B-37**](#_Timeshare_Plans_1)**;** [**61B-40**](#_Timeshare_Accounting_and_1)**)** The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(7) (a) The use of any unfair or deceptive act or practice by any person in connection with the sales or other operations of an exchange program or timeshare plan is a violation of this chapter.

(b) Any violation of the Florida Deceptive and Unfair Trade Practices Act, ss. 501.201 et seq., relating to the creation, promotion, sale, operation, or management of any timeshare plan shall also be a violation of this chapter.

(c) The division may institute proceedings against any such person and take any appropriate action authorized in this section in connection therewith, notwithstanding any remedies available to purchasers.

(8) The failure of any person to comply with any order of the division is a violation of this chapter.

## 721.265 Service of process.

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service of process may be made by delivering a copy of the

process to the director of the division, which shall be binding upon the defendant or respondent, if:

(a) The plaintiff, which may be the division, immediately sends a copy of the process and the pleading by certified mail to the defendant or respondent at her or his last known address.

(b) The plaintiff files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or by any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over her or him cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or her or his successor which grows out of the conduct and which is brought under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

(3) In addition to any means recognized by law, substituted service of process on timeshare purchasers in receivership proceedings may be made in accordance with s. 721.85(1).

## 721.27 Annual fee for each timeshare unit in plan.

On January 1 of each year, each managing entity of a timeshare plan located in this state shall collect as a common expense and pay to the division an annual fee of $2 for each 7 days of annual use availability that exist within the timeshare plan at that time, subject to any limitations on the amount of such annual fee pursuant to s. 721.58.If any portion of the annual fee is not paid by March 1, the managing entity may be assessed a penalty pursuant to s. 721.26.

## 721.28 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

All funds collected by the division and any amounts paid as fees or penalties under this chapter shall be deposited in the State Treasury to the credit of the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund created by s. 718.509.

## 721.29 Recording.

If any timeshare plan accommodations or facilities are located in any jurisdiction that does not have recording laws or will not record any document or instrument required to be recorded pursuant to this chapter, the division shall have the discretion to accept an alternative method of protecting purchasers’ rights that will be effective under the laws of that other jurisdiction.

## 721.301 Florida Timesharing, Vacation Club, and Hospitality Program.

(1) (a) There is established the Florida Timesharing, Vacation Club, and Hospitality Program. The primary purpose of this program is to provide the opportunity for a

public-private partnership between the state and the timeshare, vacation club, hospitality, and tourism industries affecting this state.

(b) In conducting the program, the director, or the director's designee, shall:

1. Solicit research and educational projects and proposals from the timeshare, vacation club, hospitality, and tourism industries;

2. Consult with the Florida chapter of the American Resort Development Association (ARDA-Florida), the Chancellor of the State University System, or the chancellor's designee; and

3. Assist in the preparation of appropriate reports produced by the program partnership.

(c) The director may designate funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, not to exceed $50,000 annually, to support the projects and proposals undertaken pursuant to paragraph (b). All state trust funds to be expended pursuant to this section must be matched equally with private moneys and shall comprise no more than half of the total moneys expended annually.

(2) The division is authorized to adopt, amend, and repeal rules prescribing criteria for processing and approval of project applications.

# PART II VACATION CLUBS

## 721.50 Short title.

This part may be cited as the “McAllister Act" in recognition and appreciation for the years of extraordinary and insightful contributions by Mr. Bryan C. McAllister, Examinations Supervisor of the former, Division of Florida Land Sales, Condominiums, and Mobile Homes.

## 721.51 Legislative purpose; scope.

(1) The purpose of this part is to advance the purposes of this chapter as set forth in s. 721.02 with respect to multisite vacation and timeshare plans, also known as vacation clubs.

(2) All multisite timeshare plans shall be governed by both part I and this part except where otherwise provided in this part. In the event of a conflict between the provisions of part I and this part, the provisions of this part shall prevail.

## 721.52 Definitions.

As used in this chapter, the term:

(1) “Applicable law" means the law of the jurisdiction where the accommodations and facilities referred to are located.

(2) “Component site" means a specific geographic site where a portion of the accommodations and facilities of the multisite timeshare plan are located. If permitted under applicable law, separate phases operated as a single development located at a specific geographic site under common management shall be deemed a single component site for purposes of this part.

(3) “Inventory" means the accommodations and facilities located at a particular component site or sites owned, leased, licensed, or otherwise acquired for use by a developer and offered as part of the multisite timeshare plan.

(4) “Multisite timeshare plan" means any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term “multisite timeshare plan" shall not include any method, arrangement, or procedure wherein:

(a) The contractually specified maximum total financial obligation on the purchaser's part is $3,000 or less, during the entire term of the plan; or

(b) The term is for a period of 3 years or less, regardless of the purchaser's contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57.

(5) “Nonspecific multisite timeshare plan” means a multisite timeshare plan with respect to which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.

(6) “Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of any accommodation or facility of the multisite timeshare plan for one or more use periods, is required to compete with other purchasers in the same multisite timeshare plan regardless of whether such reservation system is operated and maintained by the multisite timeshare plan managing entity, an exchange company, or any other person. In the event that a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy a multisite timeshare plan's accommodations and facilities, such arrangement shall be deemed a reservation system. When an exchange company utilizes a mechanism for the exchange of use of timeshare periods among members of an exchange program, such utilization is not a reservation system of a multisite timeshare plan.

(7) “Specific multisite timeshare plan” means a multisite timeshare plan with respect to which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.

(8) “Vacation club" means a multisite timeshare plan. However, notwithstanding any other provision of this chapter, the use of the term “vacation club” by a person or entity as part of a company, brand, or product name shall not, in and of itself, subject the person, entity, or product being offered to the provisions of this part unless the product offered otherwise meets the definition of a “multisite timeshare plan” as defined in subsection (4).

## 721.53 Subordination instruments; alternate security arrangements.

(1) With respect to each accommodation or facility of a multisite timeshare plan, the developer shall provide the division with satisfactory evidence that one of the following has occurred with respect to each interestholder prior to offering the accommodation or facility as a part of the multisite timeshare plan:

(a) The interestholder has executed and recorded a nondisturbance and notice to creditors instrument pursuant to s. 721.08.

(b) The interestholder has executed a subordination and notice to creditors instrument and recorded it among the appropriate public records in the jurisdiction in which the subject accommodation or facility is located. The subordination instrument shall expressly subordinate the interest or lien of the interestholder in the subject accommodation or facility to the rights of purchasers of the multisite timeshare plan created with respect to such accommodation or facility by the timeshare instrument, and shall provide that:

1. If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the multisite timeshare plan;

2. The instrument shall be effective as between the timeshare purchaser and interestholder despite any rejection or cancellation of the contract between the timeshare purchaser and developer as a result of bankruptcy proceedings of the developer; and

3. So long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the multisite timeshare plan, then the interestholder will honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument. The subordination instrument shall also contain language sufficient to provide subsequent creditors of the developer and the interestholder with notice of the existence of the timeshare plan and of the rights of purchasers and shall serve to protect the interest of the timeshare purchasers from any claims of such subsequent creditors.

(c) The interestholder has transferred the subject accommodation or facility or all use rights therein to a nonprofit organization or owners' association to be held for the use and benefit of the purchasers, which entity shall act as a fiduciary to the purchasers. Prior to such transfer, any lien or other encumbrance against such accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to either paragraph (a) or paragraph (b). No transfer pursuant to this paragraph shall become effective until the nonprofit organization or owners' association accepts such transfer and the responsibilities set forth in subsection (2).

(d) The subject accommodation or facility is free and clear of the claims of any interestholder, and the purchasers' rights in and to the subject accommodation or facility as described in and limited by the timeshare instrument are protected by a recorded instrument against the claims of any subsequent creditors of any owner of the underlying fee.

(e) The interestholder has transferred the subject accommodation or facility or all use rights therein to a trust that complies with this paragraph. . If the accommodation or facility included in such transfer is subject to a lease, the unexpired term of the lease must be disclosed as the term of that component site pursuant to s. 721.55(4)(a). Prior to such transfer, any lien or other encumbrance against such accommodation or facility shall be made subject to anondisturbance and notice to creditors instrument pursuant to paragraph (a) or a subordination and notice to creditors instrument pursuant to paragraph (b). No transfer pursuant to this paragraph shall become effective until the trust accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this paragraph shall comply with the following provisions:

1. The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan. The same trustee may hold the accommodations and facilities, or use rights therein, for one or more of the component sites of the timeshare plan.

2. The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

3. The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interests in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or the timeshare property held in trust is deleted from a multisite timeshare plan pursuant to s. 721.552(3), or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by vote of two-thirds of all voting interests of the timeshare plan. Subject to s. 721.552, a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities

4. All purchasers of the timeshare plan or the owners' association of the timeshare plan shall be express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

5. The trustee shall not resign upon less than 90 days’ prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

6. The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

7. For trusts holding property in component sites located outside this state, the trust holding such property shall be deemed in compliance with the requirements of this paragraph, if such trust is authorized and qualified to conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this paragraph for trusts holding property in a component site located in this state.

8. The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

(f) With respect to any personal property accommodations or facilities, the developer and any other interestholder have complied fully with the applicable provisions of s. 721.08.

(2) The nonprofit organization or owners' association described in paragraph (1)(c) shall comply with the following provisions:

(a) The nonprofit organization or owners' association shall not convey, hypothecate, mortgage, assign, or otherwise transfer or encumber in any fashion any portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument or the timeshare property held by the entity is deleted from a multisite timeshare plan pursuant to s. 721.552(3).

(b) The nonprofit organization or owners' association shall notify the division and the managing entity of the multisite timeshare plan of any proposed transfer of the accommodations or facilities or use rights therein which is permitted by paragraph (a) at least 30 days prior to said transfer.

(c) All expenses reasonably incurred by the nonprofit organization or owners' association in the performance of its duties, pursuant to paragraph (a), shall be common expenses of the timeshare plan.

(3) In lieu of the requirements of subsection (1) or subsection (2), the director of the division may accept other assurances from the developer with respect to the subject accommodation or facility, including, but not limited to, a surety or fidelity bond or an irrevocable letter of credit, based upon the value of the subject accommodation or facility as established by independent appraisal or other evidence acceptable to the director.

## 721.55 Multisite timeshare plan public offering statement.

Each filed public offering statement for a multisite timeshare plan shall contain the information required by this section and shall comply with the provisions of s. 721.07, except as otherwise provided therein. The division is authorized to provide by rule the method by which a developer must provide such information to the division. Each multisite timeshare plan filed public offering statement shall contain the following information and disclosures:

(1) A cover page containing:

(a) The name of the multisite timeshare plan.

(b) The following statement in conspicuous type:

This public offering statement contains important matters to be considered in acquiring an interest in a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club). The statements contained herein are only summary in nature. A prospective purchaser should refer to all references, accompanying exhibits, contract documents, and sales materials. The prospective purchaser should not rely upon oral representations as being correct and should refer to this document and accompanying exhibits for correct representations.

(2) A summary containing all statements required to be in conspicuous type in the public offering statement and in all exhibits thereto.

(3) A separate index for the contents and exhibits of the public offering statement.

(4) A text, which shall include, where applicable, the information and disclosures set forth in paragraphs (a)-(l).

(a) A description of the multisite timeshare plan, including its term, legal structure, form of ownership, and. the term of each component site within the multisite timeshare plan. The term of each component site that is shorter than the term of the multisite timeshare plan must be disclosed in conspicuous type.

(b) A description of the structure and ownership of the reservation system together with a disclosure of the entity responsible for the operation of the reservation system. The description shall include the financial terms of any lease of the reservation system, if applicable. The developer shall not be required to disclose the financial terms of any such lease if such lease is prepaid in full for the term of the multisite timeshare plan or to any extent that neither purchasers nor the managing entity will be required to make payments for the continued use of the system following default by the developer or termination of the managing entity.

(c) 1. A description of the manner in which the reservation system operates. The description shall include a disclosure in compliance with the demand balancing standard set forth in s. 721.56(6) and shall describe the developer's efforts to comply with same in creating the reservation system. The description shall also include a summary of the rules and regulations governing access to and use of the reservation system.

2. In lieu of describing the rules and regulations of the reservation system in the public offering statement text, the developer may attach the rules and regulations as a separate public offering statement exhibit, together with a cross-reference in the public offering statement text to such exhibit.

(d) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation or facility on a first come, first served basis, including, if applicable, the following statement in conspicuous type:

Component sites contained in the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) are subject to priority reservation features which may affect your ability to obtain a reservation.

(e) A summary of the material rules and regulations, if any, other than the reservation system rules and regulations, affecting the purchaser's use of each accommodation and facility at each component site.

(f) If the provisions of s. 721.552 and the timeshare instrument permit additions, substitutions, or deletions of accommodations or facilities, the public offering statement must include substantially the following information:

1. Additions.—

a. A description of the basis upon which new accommodations and facilities may be added to the multisite timeshare plan; by whom additions may be made; and the anticipated effect of the addition of new accommodations and facilities upon the reservation system, its priorities, its rules and regulations, and the availability of existing accommodations and facilities.

b. The developer must disclose the existence of any cap on annual increases in common expenses of the multisite timeshare plan that would apply in the event that additional accommodations and facilities are made a part of the plan.

c. The developer shall also disclose any extent to which the purchasers of the multisite timeshare plan will have the right to consent to any proposed additions; if the purchasers do not have the right to consent, the developer must include the following disclosure in conspicuous type:

Accommodations and facilities may be added to this multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) without the consent of the purchasers. The addition of accommodations and facilities to the plan may result in the addition of new purchasers who will compete with existing purchasers in making reservations for the use of available accommodations and facilities within the plan, and may also result in an increase in the annual assessment against purchasers for common expenses.

2. Substitutions.—

a. A description of the basis upon which new accommodations and facilities may be substituted for existing accommodations and facilities of the multisite timeshare plan; by whom substitutions may be made; the basis upon which the determination may be made to cause such substitutions to occur; and any limitations upon the ability to cause substitutions to occur.

b. The developer shall also disclose any extent to which purchasers will have the right to consent to any proposed substitutions; if the purchasers do not have the right to consent, the developer must include the following disclosure in conspicuous type:

New accommodations and facilities may be substituted for existing accommodations and facilities of this multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) without the consent of the purchasers. The replacement accommodations and facilities may be located at a different place or may be of a different type or quality than the replaced accommodations and facilities. The substitution of accommodations and facilities may also result in an increase in the annual assessment against purchasers for common expenses.

3. Deletions.—A description of any provision of the timeshare instrument governing deletion of accommodations or facilities from the multisite timeshare plan. If the timeshare instrument does not provide for business interruption insurance in the event of a casualty, or if it is unavailable, or if the instrument permits the developer, the managing entity, or the purchasers to elect not to reconstruct after casualty under certain circumstances or to secure replacement accommodations or facilities in lieu of reconstruction, the public offering statement must contain a disclosure that during the reconstruction, replacement, or acquisition period, or as a result of a decision not to reconstruct, purchasers of the plan may temporarily compete for available accommodations on a greater than one-to-one use right to use night requirement ratio.

(g) A description of the developer and the managing entity of the multisite timeshare plan, including:

1. The identity of the developer; the developer's business address; the number of years of experience the developer has in the timeshare, hotel, motel, travel, resort, or leisure industries; and a description of any pending lawsuit or judgment against the developer which is material to the plan. If there are no such pending lawsuits or judgments, there shall be a statement to that effect.

2. The identity of the managing entity of the multisite timeshare plan; the managing entity's business address; the number of years of experience the managing entity has in the timeshare, hotel, motel, travel, resort, or leisure industries; and a description of any lawsuit or judgment against the managing entity which is material to the plan. If there are no pending lawsuits or judgments, there shall be a statement to that effect. The description of the managing entity shall also include a description of the relationship among the managing entity of the multisite timeshare plan and the various component site managing entities.

(h) A description of the purchaser's liability for common expenses of the multisite timeshare plan, including the following:

1. A description of the common expenses of the plan, including the method of allocation and assessment of such common expenses, whether component site common expenses and real estate taxes are included within the total common expense assessment of the multisite timeshare plan, and, if not, the manner in which timely payment of component site common expenses and real estate taxes shall be accomplished.

2. A description of any cap imposed upon the level of common expenses payable by the purchaser

a. In no event shall the total common expense assessment for the multisite timeshare plan in a given calendar year exceed 125 percent of the total common expense assessment for the plan in the previous calendar year.

b. Component site common expenses and ad valorem taxes shall not be included in calculating the total common expense assessment under subsubparagraph a.

3. A description of the entity responsible for the determination of the common expenses of the multisite timeshare plan, as well as any entity which may increase the level of common expenses assessed against the purchaser at the multisite timeshare plan level.

4. A description of the method used to collect common expenses, including the entity responsible for such collections, and the lien rights of any entity for nonpayment of common expenses. If the common expenses of any component site are collected by the managing entity of the multisite timeshare plan, a statement to that effect together with the identity and address of the escrow agent required by s. 721.56(3).

(5) (a) Such other information as the division determines is necessary to fairly, meaningfully, and effectively disclose all aspects of the multisite timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8).

(b) If a developer has, in good faith, attempted to comply with of this chapter, and if, in fact, the developer has substantially complied with this chapter, nonmaterial errors or omissions are not actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right.

6. If the developer intends to guarantee the level of assessments for the multisite timeshare plan, such guarantee must be based upon a good faith estimate of the revenues and expenses of the multisite timeshare plan. The guarantee must include a description of the following:

a. The specific time period, measured in one or more calendar or fiscal years, during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the multisite timeshare plan, if the developer is to be excused from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the assessments. If the developer has reserved the right to extend or increase the guarantee level, a disclosure must be included to that effect.

7. If required under applicable law, the developer shall also disclose the following matters for each component site:

a. Any limitation upon annual increases in common expenses;

b. The existence of any bad debt or working capital reserve; and

c. The existence of any replacement or deferred maintenance reserve.

(i) If there are any restrictions upon the sale, transfer, conveyance, or leasing of an interest in a multisite timeshare plan, a description of the restrictions together with a statement in conspicuous type in substantially the following form:

The sale, lease, or transfer of interests in this multisite timeshare plan is restricted or controlled.

(j) The following statement in conspicuous type in substantially the following form:

The purchase of an interest in a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the interest may be resold.

(k) If the multisite timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program. In lieu of this requirement, the public offering statement text may contain a cross-reference to other provisions in the public offering statement or in an exhibit containing this information.

(l) A description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the division. The description of each component site shall include the following information:

1. The name and address of each component site.

2. The number of accommodations, timeshare interests, and timeshare periods, expressed in periods of 7-day use availability, committed to the multisite timeshare plan and available for use by purchasers.

3. Each type of accommodation in terms of the number of bedrooms, bathrooms, sleeping capacity, and whether or not the accommodation contains a full kitchen. For purposes of this description, a full kitchen shall mean a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

4. A description of facilities available for use by the purchaser at each component site, including the following:

a. The intended use of the facility, if not apparent from the description.

b. Any user fees associated with a purchaser's use of the facility.

5. A cross-reference to the location in the public offering statement of the description of any priority reservation features which may affect a purchaser's ability to obtain a reservation in the component site.

(5) Such other information as the division determines is necessary to fairly, meaningfully, and effectively disclose all aspects of the multisite timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8). However, if a developer has, in good faith, attempted to comply with the requirements of this section, and if, in fact, the developer has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions shall not be actionable.

(6) Any other information that the developer, with the approval of the division, desires to include in the public offering statement text.

(7) The following documents shall be included as exhibits to the filed public offering statement, if applicable:

(a) The timeshare instrument.

(b) The reservation system rules and regulations.

(c) The multisite timeshare plan budget pursuant to subparagraph (4)(h)5.

(d) Any document containing the material rules and regulations described in paragraph (4)(e).

(e) Any contract, agreement, or other document through which component sites are affiliated with the multisite timeshare plan.

(f) Any escrow agreement required pursuant to s. 721.08 or s. 721.56(3).

(g) The form agreement for sale or lease of an interest in the multisite timeshare plan.

(h) The form receipt for multisite timeshare plan documents required to be given to the purchaser pursuant to s. 721.551(2)(b).

(i) The description of documents list required to be given to the purchaser by s. 721.551(2)(b).

(j) The component site managing entity affidavit or statement required by s. 721.56(1).

(k) Any subordination instrument required by s. 721.53.

(l) 1. If the multisite timeshare plan contains any component sites located in this state, the information required by s. 721.07(5) pertaining to each such component site unless exempt pursuant to s. 721.03.

2. If the purchaser will receive a timeshare estate pursuant to s. 721.57, or an interest in a specific multisite timeshare plan, in a component site located outside of this state but which is offered in this state, the information required by s. 721.07(5) pertaining to that component site provided, however, that the provisions of s. 721.07(5)(t) shall only require disclosure of information related to the estimated budget for the timeshare plan and purchaser’s expenses as required by the jurisdiction in which the component site is located.

(8) (a) A timeshare plan containing only one component site must be filed with the division as a multisite timeshare plan if the timeshare instrument reserves the right for the developer to add future component sites. However, if the developer fails to add at least one additional component site to a timeshare plan described in this paragraph within 3 years after the date the plan is initially filed with the division, the multisite filing for such plan shall thereupon terminate, and the developer may not thereafter offer any further interests in such plan unless and until he or she refiles such plan with the division pursuant to this chapter.

(b) The public offering statement for any timeshare plan described in paragraph (a) must include the following disclosure in conspicuous type:

This timeshare plan has been filed as a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club); however, this plan currently contains only one component site. The developer is not required to add any additional component sites to the plan. Do not purchase an interest in this plan in reliance upon the addition of any other component sites.

## 721.551 Delivery of multisite timeshare plan purchaser public offering statement.

(1) The division is authorized to prescribe by rule the form of the approved multisite timeshare plan public offering statement that must be furnished by a seller to each purchaser pursuant to this section. The form of the public offering statement that is furnished to purchasers must provide fair, meaningful, and effective disclosure of all aspects of the multisite timeshare plan.

(2) The developer shall furnish each purchaser with the following:

(a) A copy of the approved multisite timeshare plan public offering statement text containing the information required by s. 721.55(1)-(6).

(b) A receipt for multisite timeshare plan documents and a list describing any exhibit to the filed public offering statement which is not delivered to the purchaser. The division is authorized to prescribe by rule the form of the receipt for multisite timeshare plan documents and the description of exhibits list that must be furnished to the purchaser pursuant to this section.

(c) If the purchaser will receive an interest in a specific multisite timeshare plan, component site located in this state, the developer shall also furnish the purchaser with the information required to be delivered pursuant to s. 721.07(6)(a) and (b) for that component site.

(d) Any other exhibit that the developer elects to include as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division.

(e) An executed copy of any document which the purchaser signs.

(f) The developer shall be required to provide the managing entity of the multisite timeshare plan with a copy of the approved filed public offering statement and any approved amendments thereto to be maintained by the managing entity as part of the books and records of the timeshare plan pursuant to s. 721.13(3)(d).

## 721.552 Additions, substitutions, or deletions of component site accommodations or facilities; purchaser remedies for violations.

Additions, substitutions, or deletions of component site accommodations or facilities may be made only in accordance with the following:

(1) ADDITIONS.—

(a) The timeshare instrument must provide for:

1. The basis upon which new accommodations and facilities may be added to the multisite timeshare plan; by whom additions may be made; and the anticipated effect of the addition of new accommodations and facilities upon the reservation system, its priorities, its rules and regulations, and the availability of existing accommodations and facilities.

2. Any cap on annual increases in common expenses of the multisite timeshare plan that would apply in the event that additional accommodations and facilities are made a part of the plan.

3. The extent, if any, to which purchasers of the multisite timeshare plan will have the right to consent to any proposed additions.

(b) Any person who is authorized by the timeshare instrument to make additions to the multisite timeshare plan pursuant to this subsection shall act as a fiduciary in such capacity in the best interests of the purchasers of the plan as a whole and shall adhere to the demand balancing standard set forth in s. 721.56(6) in connection with such additions. Additions that are otherwise permitted may be made only so long as a one-to-one use right to use night requirement ratio is maintained at all times.

(2) SUBSTITUTIONS.—

(a) Substitutions are available only for nonspecific multisite timeshare plans. Specific multisite timeshare plans may not contain an accommodation substitution right.

(b) The timeshare instrument shall provide for the following:

1. The basis upon which new accommodations and facilities may be substituted for existing accommodations and facilities of the multisite timeshare plan; by whom substitutions may be made; and the basis upon which the determination may be made to cause such substitutions to occur.

2. The replacement accommodations and facilities must provide purchasers with an opportunity to enjoy a substantially similar or improved vacation experience as compared to the experience available at the replaced accommodation or facility. In determining whether the replacement accommodations and facilities will provide a substantially similar or improved vacation experience, all relevant factors must be considered, including, but not limited to, some or all of the following: size, capacity, furnishings, maintenance, location (geographic, topographic, and scenic), demand, and availability for purchaser use, and recreational capabilities.

3. The extent, if any, to which purchasers will have the right to consent to any proposed substitutions.

(c) No substitutions may be made during the first year after the developer begins to offer the multisite timeshare plan.

(d) 1. If the timeshare instrument provides that the developer, acting unilaterally, is the person authorized to make substitutions, the developer may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7- day increments

2. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.

3. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 25 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.

4. If the person authorized to make substitutions receives, within 21 days after the date of the notice of substitution required by paragraph (e), a written objection to the proposed substitution from at least 10 percent of all purchasers in the multisite timeshare plan, a meeting of the purchasers must be conducted by the managing entity within 30 days after the end of such 21- day period. The proposed substitution is ratified unless it is rejected by a majority of purchasers voting in person or by proxy at the meeting, provided that at least 25 percent of all purchasers cast votes. This subparagraph does not apply if the timeshare instrument provides that purchasers do not have the right to consent to any proposed substitutions.

5. This paragraph does not apply if the proposed substitution is approved in advance pursuant to paragraph (f).

(e) The person authorized to make substitutions shall notify all purchasers of the multisite timeshare plan in writing of her or his intention to delete accommodations or facilities and to substitute them with other specified accommodations or facilities pursuant to this subsection. This notice must be given at least 6 months in advance of the date that the proposed substitution will occur ; must state the last day after the end of the 6-month period on which reservations will be accepted from purchasers for use of the accommodations to be deleted; and must state that purchasers shall have 21 days after the date of the notice of substitution to file a written objection with the person authorized to make substitutions The person authorized to make substitutions may delete accommodations for substitution only after such accommodations have no pending purchaser use reservations (f) The person authorized to make substitutions may make unlimited substitutions in a given year without compliance with paragraphs (d) and (e) if a proposed substitution is approved in advance by a majority of purchasers of the multisite timeshare plan voting in person or by proxy at a meeting called for that purpose, provided that at least 25 percent of the total number of purchasers cast votes

Substitutions made pursuant to this paragraph shall not be subject to the provisions of subparagraph (b)2.

(g) If the person authorized to make substitutions has fully complied with the applicable provisions of this subsection and the timeshare instrument, the trustee of a timeshare trust qualified under s. 721.53(1)(e) may convey title to any accommodations and facilities that have been designated or approved for substitution as and when directed by the person authorized to make substitutions without any further vote or other authorization of the purchasers of the multisite timeshare plan.

(h) The person who is authorized by the timeshare instrument to make substitutions to the multisite timeshare plan pursuant to this subsection shall act as a fiduciary in such capacity in the best interests of the purchasers of the plan as a whole and shall adhere to the demand balancing standard set forth in s. 721.56(6) in connection with such substitutions. Substitutions that are otherwise permitted may be made only so long as a one-to-one use right to use night requirement ratio is maintained at all times.

(g) If the person authorized to make substitutions has fully complied with the applicable provisions of this subsection and the timeshare instrument, the trustee of a timeshare trust qualified under s. 721.53(1)(e) may convey title to any accommodations and facilities that have been designated or approved for substitution as and when directed by the person authorized to make substitutions without any further vote or other authorization of the purchasers of the multisite timeshare plan.

(h) The person who is authorized by the timeshare instrument to make substitutions to the multisite timeshare plan pursuant to this subsection shall act as a fiduciary in such capacity in the best interests of the purchasers of the plan as a whole and shall adhere to the demand balancing standard set forth in s. 721.56(6) in connection with such substitutions. Substitutions that are otherwise permitted may be made only so long as a one-to-one use right to use night requirement ratio is maintained at all times.

(3) DELETIONS.—

(a) Deletion by casualty.—

1. Pursuant to s. 721.165, the timeshare instrument creating the multisite timeshare plan must provide for casualty insurance for the accommodations and facilities of the multisite timeshare plan in an amount equal to the replacement cost of such accommodations or facilities. The timeshare instrument must also provide that in the event of a casualty that results in accommodations or facilities being unavailable for use by purchasers, the managing entity shall notify all affected purchasers of such unavailability of use within 30 days after the event of casualty.

2. The timeshare instrument must also provide for the application of any insurance proceeds arising from a casualty to either the replacement or acquisition of additional similar accommodations or facilities or to the removal of purchasers from the multisite timeshare plan so that purchasers will not be competing for available accommodations on a greater than one-to-one use right to use night requirement ratio.

3. If the timeshare instrument does not provide for business interruption insurance, or if it is unavailable, or if the instrument permits the developer, the managing entity, or the purchasers to elect not to reconstruct after casualty under certain circumstances or to secure replacement accommodations or facilities in lieu of reconstruction, purchasers of the plan may temporarily compete for available accommodations on a greater than one-to-one use right to use night requirement ratio. The decision whether or not to reconstruct shall be made as promptly as possible under the circumstances.

4. Any replacement of accommodations or facilities pursuant to this paragraph shall be made upon the same basis as required for substitution as set forth in subparagraph (2)(b)2.

(b) Deletion by eminent domain.—

1. The timeshare instrument creating the multisite timeshare plan must also provide for the application of any proceeds arising from a taking under eminent domain proceedings to either the replacement or acquisition of additional similar accommodations or facilities or to the removal of purchasers from the multisite timeshare plan so that purchasers will not be competing for available accommodations on a greater than one-to-one use right to use night requirement ratio.

2. Any replacement of accommodations or facilities pursuant to this paragraph shall be made upon the same basis as required for substitution set forth in subparagraph (2)(b)2.

(c) Automatic deletion.—The timeshare instrument may provide that a component site will be automatically deleted upon the expiration of its term or as otherwise provided in the timeshare instrument. However, the timeshare instrument must also provide that in the event a component site is deleted from the plan in this manner, a sufficient number of purchasers of the plan will also be deleted, or a sufficient number of replacement accommodations and facilities that comply with subparagraph (2)(b)2. will be substituted for the deleted accommodations and facilities, so as to maintain no greater than a one-to-one use right to use night requirement ratio.

(4) VIOLATIONS; PURCHASER REMEDIES.—All purchaser remedies pursuant to s. 721.21 shall be available for any violation of the provisions of this section.

## 721.56 Management of multisite timeshare plans; reservation systems; demand balancing.

(1) The developer as a prerequisite for approval of his or her public offering statement filing or his or her phase filing must obtain an affidavit, or other evidence satisfactory to the director of the division, from the component site managing entity containing all of the following:

(a) A statement that all assessments on inventory are fully paid as required by applicable law.

(b) A statement as to the amount of delinquent assessments existing at the component site, if any.

(c) If required by applicable law, a statement that the latest annual audit of the component site shows that, if required, reserves are adequately maintained with respect to each component site.

(d) A statement that the component site managing entity specifically acknowledges the existence of the multisite timeshare plan relating to the use of the accommodations and facilities of the component site by purchasers of the plan.

(2) In the event that the developer files an affidavit or other evidence with the division pursuant to subsection (1) and subsequently determines that the status of the component site has materially changed such that any portion of the affidavit or other evidence is consequently materially changed, the developer shall immediately notify the division of the change.

(3) (a) The managing entity of the multisite timeshare plan shall establish an escrow account with an escrow agent qualified pursuant to s. 721.05 and deposit into such account all payments received by the managing entity from time to time from the developer and purchasers of the plan that relate to common expenses and real estate taxes due with respect to any component site. The managing entity of the multisite timeshare plan shall not be required to escrow payments received from the developer or purchasers that relate to other plan expenses, including those pertaining to the compensation of the managing entity of the multisite timeshare plan and pertaining to the operation of the reservation system.

(b) Funds may only be disbursed from the escrow account described in paragraph (a) by the escrow agent upon receipt of an affidavit from the managing entity of the multisite timeshare plan specifying the purpose for which the disbursement is requested and making reference to the budgetary source of authority for such disbursement. The escrow agent shall only disburse moneys from escrow relating to a particular component site directly to the managing entity of that component site. Real estate tax payments shall only be disbursed from the escrow account to the component site managing entity or to the appropriate tax collection authority pursuant to applicable law.

(c) The escrow agent shall be entitled to rely upon the affidavit of the managing entity and shall have no obligation to independently ascertain the propriety of the requested disbursement so long as the escrow agent has no actual knowledge that the affidavit is false in any respect.

(d) An escrow agent shall maintain the account called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each purchaser to maintain the escrow account in accordance with good accounting principles and to release funds from escrow only in accordance with this subsection. The escrow agent shall retain all affidavits received pursuant to this subsection for a period of 5 years. Should the escrow agent receive conflicting demands for the escrowed funds, the escrow agent shall immediately notify the division of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(e) Any managing entity or escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposit of funds into escrow, and withdrawal therefrom commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds therein as required in this subsection is prima facie evidence of an intentional and purposeful violation of this subsection.

(f) In lieu of the escrow required by this subsection, the director of the division shall have the discretion to accept other assurances in accordance with s. 721.08, provided that such other assurances are maintained at a minimum amount equal to the total common expense assessment payments for the then-current fiscal year.

(g) The provisions of this subsection shall not apply to any payments made directly to a component site managing entity by the developer or a purchaser of a multisite timeshare plan.

(4) The managing entity of a multisite timeshare plan shall comply fully with the requirements of s. 721.13, subject to the provisions of s. 721.13(11) for personal property timeshare plans; however, with respect to a given component site, the managing entity of the multisite timeshare plan shall not be responsible for compliance as the managing entity of that component site unless the managing entity of the multisite timeshare plan is also the managing entity of that component site. Unless the timeshare instrument provides otherwise, the operator of the reservation system is the managing entity of a multisite timeshare plan.

(5) Nothing contained in this part shall preclude a manager or management firm that is serving as managing entity of a multisite timeshare plan from providing in its contract with the purchasers or owners' association of the multisite timeshare plan or in the timeshare instrument that the manager or management firm owns the reservation system and that the managing entity shall continue to own the reservation system in the event the purchasers discharge the managing entity pursuant to s. 721.14.

(6) Prior to offering the multisite timeshare plan, the developer shall create the reservation system and shall establish rules and regulations for its operation. In establishing these rules and regulations, the developer shall take into account the location and anticipated relative use demand of each component site that he or she intends to offer as a part of the plan and shall use his or her best efforts, in good faith and based upon all reasonably available evidence under the circumstances, to further the best interests of the purchasers of the plan as a whole with respect to their opportunity to use and enjoy the accommodations and facilities of the plan. The rules and regulations shall also provide for periodic adjustment or amendment of the reservation system by the managing entity from time to time in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations and facilities existing at that time within the plan. The person authorized to make additions and substitutions during the term of the multisite timeshare plan shall also comply with the requirements of this subsection in ascertaining the desirability of the proposed addition, substitution, adjustment, or amendment and the impact of same upon the demand for and availability of existing plan accommodations and facilities.

## 721.57 Offering of timeshare estates in multisite timeshare plans; required provisions in the timeshare instrument.

(1) In addition to meeting all the requirements of part I, timeshare estates offered in a specific multisite timeshare plan must meet the requirements of subsection (2). Any offering of timeshare estates in a specific multisite timeshare plan that does not comply with these requirements shall be deemed to be an offering of a timeshare license.

(2) The timeshare instrument of a specific multisite timeshare plan in which timeshare estates are offered, must contain or provide for all of the following matters:

(a) The purchaser will receive a timeshare estate as defined in s. 721.05 in one of the component sites of the specific multisite timeshare plan. The use rights in the other component sites of the multisite timeshare plan shall be made available to the purchaser through the reservation system pursuant to the timeshare instrument.

(b) In the event that the reservation system is terminated or otherwise becomes unavailable for any reason prior to the expiration of the term of the specific multisite timeshare plan:

1. The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for that component site for the remaining term of the timeshare estate; and

2. Any use rights in that component site which had previously been made available through the reservation system to purchasers of the specific multisite timeshare plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.

## 721.58 Filing fee; annual fee.

(1) The developer of the multisite timeshare plan shall pay the filing fee required by s. 721.07(4)(a); however, the maximum amount of such filing fee shall be $25,000 or the total filing fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state pursuant to s. 721.07(4)(a), whichever is greater.

(2) The managing entity of the multisite timeshare plan shall pay the annual fee required by s. 721.27; provided, however, that the maximum amount of such annual fee shall be $25,000 or the total annual fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state calculated pursuant to s. 721.07(4)(a), whichever is greater.

# PART III

# FORECLOSURE OF LIENS ON TIMESHARE INTERESTS

## 721.80 Short title.

This part may be cited as the “Timeshare Lien Foreclosure Act."

## 721.81 Legislative purpose.

The purposes of this part are to:

(1) Recognize that timeshare interests are used for vacation experience rather than for homestead or investment purposes and that there are numerous timeshare interests in this state.

(2) Recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of an efficient and economical process for all timeshare interest foreclosures.

(3) Recognize the need to assist both owners' associations and mortgagees by simplifying and expediting the process for the judicial and trustee foreclosure of assessment liens and mortgage liens against timeshare interests.

(4) Improve judicial economy and reduce court congestion and the cost to taxpayers by establishing streamlined procedures for the judicial and trustee foreclosure of assessment liens and mortgage liens against timeshare interests.

(5) Recognize that nearly all timeshare interest foreclosures are uncontested.

(6) Protect the ability of consumers who own timeshare interests located in this state to choose a judicial proceeding for the foreclosure of an assessment lien or a mortgage lien against their timeshare interest.

(7) Recognize that the use of the trustee foreclosure procedure established under ss. 721.855 and 721.856 shall have the same force and effect as the use of the judicial foreclosure procedure against a timeshare interest with respect to the provisions of this chapter or any other applicable law. However, obligors shall not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

## 721.82 Definitions.

As used in this part, the term:

(1) “Amounts secured by the lien” means all amounts secured by an assessment lien or mortgage lien, including, but not limited to, all past due amounts, accrued interest, late fees, taxes, advances for the payment of taxes, insurance and maintenance of the timeshare interest, and any fees or costs incurred by the lienholder or trustee, including any reasonable attorney fees, trustee’s fees, and costs incurred in connection with the default.

(2) “Assessment lien" means:

(a) A lien for delinquent assessments as provided in ss. 718.116 and 719.08 and 721.16 or

(b) A lien for unpaid ad valorem assessments, tax assessments and special assessments as provided in s. 192.037(8).

(3) “Junior interestholder" means any person who has a lien or interest of record against a timeshare interest in the county or counties in which the timeshare interest estate is located, which is inferior to the mortgage lien or assessment lien being foreclosed under this part.

(4) “Lienholder" means a holder of an assessment lien or a holder of a mortgage lien, as applicable. A receiver appointed under s. 721.26 is a lienholder for purposes of foreclosure of assessment liens under this part.

(5) “Mortgage" has the same meaning set forth in s. 697.01.

(6) “Mortgage lien" means a security interest in a timeshare interest created by a mortgage encumbering the timeshare interest.

(7) “Mortgagee" means a person holding a mortgage lien.

(8) “Mortgagor" means a person granting a mortgage lien or a person who has assumed the obligation secured by a mortgage lien.

(9) “Notice address" means:

(a) As to an assessment lien, the address of the owner of a timeshare interest as reflected by the books and records of the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the owner of the timeshare interest is different from the mortgagor, the address of the owner of the timeshare interest as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior ­lien or interest or in any recorded amendment thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the address.

(d) As to an owner of a timeshare interest, mortgagor, or junior interestholder whose current address is not the address as determined by paragraph (a), paragraph (b), or paragraph (c), such address as is known to be the current address.

(10) “Obligor" means the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare interest.

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.

(12) “Registered agent" means an agent duly appointed by the obligor under s. 721.84 for the purpose of accepting all notices and service of process under this part. A registered agent may be an individual resident in this state whose business office qualifies as a registered office, or a domestic or foreign corporation or a not-for-profit corporation as defined in chapter 617 authorized to transact business or to conduct its affairs in this state, whose business office qualifies as a registered office. A registered agent for any obligor may not be the lienholder or the attorney for the lienholder.

(13) “Registered office" means the street address of the business office of the registered agent appointed under s. 721.84, located in this state.

(14) “Trustee” means an attorney who is a member in good standing of The Florida Bar and who has been practicing law for at least 5 years or that attorney’s law firm, or a title insurer authorized to transact business in this state under s. 624.401 and who has been authorized to transact business for at least 5 years, appointed as trustee or as substitute trustee in accordance with s. 721.855 or s. 721.856. A receiver appointed under s. 721.26 may act as a trustee under s. 721.855. A trustee must be independent as defined in s.721.05(20).

## 721.83 Consolidation of judicial foreclosure actions.

(1) A complaint in a foreclosure proceeding involving timeshare interests may join in the same action multiple defendant obligors and junior interestholders of separate timeshare interests, provided:

(a) The foreclosure proceeding involves a single timeshare property.

(b) The foreclosure proceeding is filed by a single plaintiff.

(c) The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant.

(d) The nature of the defaults alleged is the same for each defendant.

(e) No more than 15 timeshare interests, without regard to the number of defendants, are joined within the same consolidated foreclosure action.

(2) In any foreclosure proceeding involving multiple defendants filed under subsection (1), the court shall sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

(3) A consolidated timeshare foreclosure action shall be considered a single action, suit, or proceeding for the payment of filing fees and service charges pursuant to general law. In addition to the payment of such filing fees and service charges, an additional filing fee of up to $10 from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund for each timeshare interests joined in that action shall be paid to the clerk of court.

## 721.84 Appointment of a registered agent; duties.

(1) Any obligor may appoint a registered agent on whom notices and process may be served under s. 721.85. The statement of appointment must be in writing signed by the obligor and must:

(a) Provide the name of the registered agent and the street address for the registered office;

(b) Identify the obligor for whom the registered agent serves;

(c) Indicate the purpose of the appointment;

(d) Specify the instruments out of which the liens arise;

(e) Designate the address the obligor wishes to use to receive mail from the registered agent; and

(f) Contain the obligor's undertaking to inform the registered agent of any change in such designated address. The statement of appointment must also provide for the registered agent's acceptance of the appointment, which must confirm that the registered agent is familiar with and accepts the obligations of that position as set forth in this section.

(2) An obligor may change but not revoke its appointment of registered agent and registered office under this chapter by executing a written statement of change that identifies the former registered agent and registered address and also satisfies all of the requirements of subsection (1). A copy of the statement of change must be promptly provided to the former registered agent and the affected lienholder and becomes effective upon receipt by the affected lienholder.

(3) A registered agent appointed under subsection (1) or a successor registered agent appointed under subsection (2) shall provide the lienholder with a copy of the obligor's appointment and the executed acceptance of the appointment by the registered agent promptly following the registered agent's receipt of the statement of appointment or statement of change executed by the obligor. The statement of appointment or statement of change becomes effective upon receipt by the lienholder of the fully executed form. A successor registered agent shall promptly provide a copy of a statement of change to the former registered agent.

(4) A registered agent may change its business name or the street address of the registered office for any obligor for which it serves as registered agent by:

(a) Notifying all obligors of the specific change in writing at the address such obligor designated for receipt of mail from the registered agent; and

(b) Delivering to each respective lienholder a statement that updates the information on the original appointment or change of appointment, identifies the names of all affected obligors, and states that each such affected obligor has been notified of the change.

(5) A registered agent may resign his or her agency appointment for any obligor for which he or she serves as registered agent, provided that:

(a) The resigning registered agent executes a written statement of resignation that identifies himself or herself and the street address of his or her registered office, and identifies the obligors affected by his or her resignation;

(b) A successor registered agent is appointed and such successor registered agent executes an acceptance of appointment as successor registered agent and satisfies all of the requirements of subsection (1). The resigning registered agent may designate the successor registered agent; however, if the resigning registered agent fails to designate a successor registered agent or the designated successor registered agent fails to accept, the successor registered agent for the affected obligors may be designated by the mortgagee as to the mortgage lien and by the association as to the assessment lien; and

(c) Copies of the statement of resignation and acceptance of appointment as successor registered agent are promptly mailed to the affected obligors at the obligors' last designated address shown on the records of the resigning registered agent and to the affected lienholders. The agency and registered office of the resigning registered agent are terminated and the agency and registered office of the successor registered agent are effective as of the 10th day after the date on which the statement of resignation and acceptance of appointment as successor registered agent are received by the lienholder, unless a longer period is provided in the statement of resignation and acceptance of appointment as successor registered agent.

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail, by first-class mail if the obligor's address is within the United States, and by international air mail if the obligor's address is outside the United States, with postage fees prepaid, such notice or documents to the obligor at the obligor's last designated address within 5 days after receipt.

(7) In the absence of a written agreement to the contrary, a registered agent is not liable for the failure to give notice to the obligor of the receipt of any document under this part if, such registered agent has complied in a timely manner with the procedures and duties in this section.

## 721.85 Service to notice address or on registered agent.

(1) Service of process for a foreclosure proceeding involving a timeshare interests may be made by any means recognized by law. In addition, substituted service on an obligor who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office. Also, when using s. 48.194 where in rem or quasi in rem relief only is sought, such service of process provisions are modified in connection with a foreclosure proceeding against a timeshare interests to provide that:

(a) Such service of process may be made on any person whether the person is located inside or outside this state, by certified ­mail, registered mail, or permitted delivery service, return receipt requested, addressed to the person to be served at the notice address, or on the person’s registered agent duly appointed under s. 721.84, at the registered office; and

(b) Service shall be considered obtained upon the signing of the return receipt by any person at the notice address, or by the registered agent.

(2) The current owner and the mortgagor of a timeshare interest must promptly notify the owners’ association and the mortgagee of any change of address.

(3) Substituted notice under s. 721.855 or s. 721.856 for any party who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office.

## 721.855 Procedure for the trustee foreclosure of assessment liens.—

The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(1) APPOINTMENT OF TRUSTEE.—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any assessment lien under any timeshare plan for which the trustee is appointed.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.—

(a) Before initiating the trustee foreclosure procedure against any timeshare interest in a given timeshare plan:

1. If a timeshare instrument contains any provision specifically prohibiting the use of the trustee foreclosure procedure, or if the managing entity otherwise determines that the timeshare instrument should be amended to specifically provide for the use of the trustee foreclosure procedure, an amendment to the timeshare instrument permitting the use of the trustee foreclosure procedure set forth in this section must be adopted and recorded prior to the use of the trustee foreclosure procedure. Such amendment to the timeshare instrument shall contain a statement in substantially the following form and may be adopted by a majority of those present and voting at a duly called meeting of the owners’ association at which at least 15 percent of the voting interest are present in person or by proxy:

If a timeshare owner fails to make timely payments of timeshare plan common expenses, ad valorem taxes, or special assessments, an assessment lien against the timeshare owner’s timeshare interest may be foreclosed in accordance with a judicial foreclosure procedure or a trustee foreclosure procedure, either of which may result in the loss of the timeshare owner’s timeshare interest. If the managing entity initiates a trustee foreclosure procedure, the timeshare owner shall have the option to object pursuant to Florida law, and in such event the managing entity may thereafter proceed only by filing a judicial foreclosure action.

2. The managing entity shall inform owners of timeshare interests in the timeshare plan in writing that the managing entity has the right to elect to use the trustee foreclosure procedure with respect to foreclosure of assessment liens as established in this section. The managing entity shall be deemed to have complied with the requirements of this subparagraph if the owners of timeshare interests in the given timeshare plan are informed by mail sent to each owner’s notice address, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

(b) Before initiating the trustee foreclosure procedure against any timeshare interest, a claim of lien against the timeshare interest shall be recorded under s. 721.16 or, if applicable, s. 718.116 or s. 719.108, and the notice of the intent to file a lien shall be given under s. 718.121 for timeshare condominiums and s. 719.108 for timeshare cooperatives.

(c) 1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the timeshare instrument or applicable law.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the assessment lien was properly created and authorized pursuant to the timeshare instrument and applicable law.

(3) OBLIGOR’S RIGHTS.—

(a) The obligor may object to the lienholder’s use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) CONDITIONS TO TRUSTEE’S EXERCISE OF POWER OF SALE.

A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest before the recording of the notice of lis pendens pursuant to paragraph (5)(h),and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); and

(e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located; and

(f) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state:

“The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;

b. The trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor’s or junior interestholder’s name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt; or

c. The receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee’s diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is refused, returned, or the trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor’s or junior interestholder’s name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee’s diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notices were mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received.

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit shall also include the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation. No other action of the trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(a) The notice of sale shall set forth:

1. The name and notice addresses of the obligor and any junior interestholder.

2. The legal description of the timeshare interest.

3. The name and address of the trustee.

4. A description of the default that is the basis for the foreclosure.

5. The official records book and page numbers where the claim of lien is recorded.

6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.

7. The date, location, and starting time of the trustee’s sale.

8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).

(b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h),the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d) 1. The trustee shall publish the notice of sale in a newspaper of general circulation

in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date, location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee’s sale may occur online at a specific website on the Internet or in any other manner used by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(e), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6. (f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted under this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE’S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(d) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor’s liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor’s timeshare interest under this section.

(d) The issuance and recording of the trustee’s deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the assessment lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such assessment lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE’S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance that:

1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).

2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).

3. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.

4. Confirms that the notice of sale was mailed under paragraph (6)(b) together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE’S DEED.—

(a) The trustee’s deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee’s deed. The trustee’s deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee’s deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee’s deed to the timeshare interest, the trustee shall:

1. Issue a trustee’s deed to the highest bidder.

2. Record the trustee’s deed in the official records of the county or counties in which the timeshare interest is located.

(c) 1. The certificate of compliance and trustee’s deed together are

presumptive evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee’s deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee’s deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, at the time of the recording of the claim of lien, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the recording of the claim of lien.

3. The issuance and recording of a trustee’s deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.

2. To the amount owed and set forth in the notice as required in subparagraph (6)(a)6.

3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney fees and costs.

4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(c) and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney fees and costs.

(12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder’s continuing right to bring a judicial foreclosure action, in lieu ofusing the trustee foreclosure procedure, with respect to any assessment lien.

(13) APPLICATION.—This section applies to any default giving rise to the imposition of an assessment lien which occurs after the effective date of this section.

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in s. 721.855(5) does not violate this section if the trustee made a good faith effort to properly ascertain that the obligor signed the return receipt in accordance with subsection (5).

## 721.856 Procedure for the trustee foreclosure of mortgage liens.—

The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(1) APPOINTMENT OF TRUSTEE.—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any mortgage lien.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(a) Before initiating the trustee foreclosure against a timeshare interest, the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of this section, must contain a statement in substantially the following form: If the mortgagor fails to make timely payments under the obligation secured by this mortgage, or is otherwise deemed in uncured default of this mortgage, the lien against the mortgagor’s timeshare interest created by this mortgage may be foreclosed in accordance with either a judicial foreclosure procedure or a trustee foreclosure procedure and may result in the loss of your timeshare interest. If the mortgagee initiates a trustee foreclosure procedure, the mortgagor shall have the option to object and the mortgagee may proceed only by filing a judicial foreclosure action.

(b) 1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the mortgage or is otherwise deemed in uncured default under a specified provision of the mortgage.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the appropriate amount of documentary stamp tax and intangible taxes has been paid upon recording of the mortgage, or otherwise paid to the state.

5. The affidavit shall also state that the lienholder is the holder of the note and has complied with all preconditions in the note and mortgage to determine the amounts secured by the lien and to initiate the use of the trustee foreclosure procedure.

(3) OBLIGOR’S RIGHTS.—

(a) The obligor may object to the lienholder’s use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) CONDITIONS TO TRUSTEE’S EXERCISE OF POWER OF SALE.

A trustee may sell an encumbered timeshare interest foreclosed under this

section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest before the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;

(e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5);

(f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the mortgage was recorded, and

(g) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state:

“The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;

b. The trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor’s or junior interestholder’s name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt;, or

c. The receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee’s diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder is refused, returned, or the trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor’s or junior interestholder’s name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee’s diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received.

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit shall also include the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation. No other action of the trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(a) The notice of sale shall set forth:

1. The name and notice addresses of the obligor and any junior interestholder.

2. The legal description of the timeshare interest.

3. The name and address of the trustee.

4. A description of the default that is the basis for the foreclosure.

5. The official records book and page numbers where the mortgage is recorded.

6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.

7. The date, location, and starting time of the trustee’s sale.

8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).

(b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h),the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s.48.23.

(d) 1. The trustee shall publish the notice of sale in a newspaper of general

circulation in the county or counties in which the timeshare interest is

located at least once a week for 2 consecutive weeks before the date of the

sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date, location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee’s sale may occur online at a specific website on the Internet or in any other manner used by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(f), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6.

(f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted pursuant to this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE’S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(e) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor’s liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor’s timeshare interest under this section.

(d) The issuance and recording of the trustee’s deed is presumed valid and may be relied upon by third parties without actual knowledge of any irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the mortgage lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such mortgage lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE’S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance which:

1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).

2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).

3. States that the trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien.

4. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.

5. Confirms that the notice of sale was mailed under paragraph (6)(b) together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE’S DEED.—

(a) The trustee’s deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee’s deed. The trustee’s deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee’s deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee’s deed to the timeshare interest, the trustee shall:

1. Cancel the original promissory note executed by the mortgagor and secured by the mortgage lien.

2. Issue a trustee’s deed to the highest bidder.

3. Record the trustee’s deed in the official records of the county or counties in which the timeshare interest is located.

(c) 1. The certificate of compliance and trustee’s deed together are presumptive

evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee’s deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee’s deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the execution of the mortgage.

3. The issuance and recording of a trustee’s deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.

2. To the amount owed and set forth in the notice as required under subparagraph (6)(a)6.

3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney fees and costs.

4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(b) and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney fees and costs.

(12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder’s continuing right to bring a judicial foreclosure action, in lieu of using the trustee foreclosure procedure, with respect to any mortgage lien.

(13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE

PROCEDURE.—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## 721.8561 Administrative Fee

An administrative fee of $50 per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures set forth in ss. 721.855 and 721.856, Florida Statutes, shall be paid and remitted at the same time and in the same manner as documentary stamp taxes imposed pursuant to s. 201.02, Florida Statutes. Revenues from such fees shall be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.

## 721.86 Miscellaneous provisions.

(1) In the event of a conflict between the provisions of this part and the other provisions of this chapter, chapter 702, or other applicable law, the provisions of this part shall prevail. The procedures in this part must be given effect in the context of any foreclosure proceedings against timeshare interests governed by this chapter, chapter 702, chapter 718, or chapter 719. ;

(2) If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application. To this end, the provisions of this part are declared severable.

(3) The division has no authority to regulate, enforce, or ensure compliance with any provision of this part.

(4) In addition to assessment liens and mortgage liens arising after the effective date of this part, except as provided in s. 721.855(13), the provisions of this part apply to all assessment liens and mortgage liens existing prior to the effective date of this act regarding which a foreclosure proceeding has not yet commenced.

# PART IV COMMISSIONER OF DEEDS

## 721.96 Purpose.

The purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

## 721.97 Timeshare commissioner of deeds.

(1) The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), Florida Statutes 1997, and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

(2) Any person seeking to be appointed a commissioner of deeds must take and subscribe to an oath, before a notary public in this state or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of such commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with and under the authority of this part.

## 721.98 Powers of the division.

The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

# Mobile Home Park Lot Tenancies

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# Mobile Homes

See also Mobile Home Rules: [61B-29\_Definitions](#_61B-29.001_Definitions.), [61B-30\_Advertising Perspectus](#_MOBILE_HOME_ADVERTISING), [61B-31 Prospectus and Rental Agreement](#_61B-31.001_Prospectus_and), [61B-32 Mediation Rules](#_61B-32.002_Notice_of), FLORIDA ADMINISTRATIVE CODE..

## 723.001 Short title.——

This chapter shall be known and may be cited as the "Florida Mobile Home Act."

## 723.002 Application of chapter.——

(1) The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. This chapter shall not be construed to apply to any other tenancy, including a tenancy in which both a mobile home and a mobile home lot are rented or leased by the mobile home resident or a tenancy in which a rental space is offered for occupancy by recreational-vehicle-type units which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle. When both the mobile home and lot are rented or when fewer than 10 lots are available for rent or lease, the tenancy shall be governed by the provisions of part II of chapter 83, the "Florida Residential Landlord and Tenant Act." However, this chapter shall continue to apply to any tenancy in a park even though the number of lots offered in that park has been reduced to below 10 if that tenancy was subject to the provisions of this chapter prior to the reduction in lots. This subsection is intended to clarify existing law.

(2) The provisions of ss. 723.035, 723.037, 723.038, 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable to mobile home subdivision developers and the owners of lots in mobile home subdivisions.

(3) Any other provision of this chapter or any other provision of the Florida Statutes to the contrary notwithstanding, the provisions of this chapter shall be applicable to a park trailer located on a mobile home lot in a mobile home park.

## 723.003 Definitions.——

As used in this chapter, the

(1) "Discrimination" or "discriminatory" means that a home owner is being treated differently as to the rent charged, the services rendered, or an action for possession or other civil action being taken by the park owner, without a reasonable basis for the different treatment.

(2) "Division" means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation.

(3) “Electronic transmission” means a 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 a 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 copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via e-mail between computers. Electronic transmission does not include oral communication by telephone.

(4) “Homeowners’ association” means a corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, in a subdivision the homeowners’ association authorized in the subdivision documents in which all home owners must be members as a condition of ownership.

(5) “Homeowners’ committee” means a committee, not to exceed five persons in number, designated by a majority of the affected homeowners in a mobile home park or a subdivision; or, if a homeowners’ association has been formed, designated by the board of directors of the association. The homeowners’ committee is designated for the purpose of meeting with the park owner or park developer to discuss lot rental increases, reduction in services or utilities, or changes in rules and regulations and any other matter authorized by the homeowners’ association, or the majority of the affected home owners, and who are authorized to enter into a binding agreement with the park owner or subdivision developer, or a binding mediation agreement, on behalf of the association, its members, and all other mobile home owners in the mobile home park.

(6) "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy.

(7) (a) “Mediation” means a process whereby a mediator appointed by the Division of Florida Condominiums, Timeshares, and Mobile Homes, or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.

(b) For purposes of mediation under ss. 723.037 and 723.038, the term “parties” means a park owner as defined in subsection (13) and a homeowners’ committee selected pursuant to s. 723.037.

(8) "Mobile home" means a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(9) “Mobile home lot” means a lot described by a park owner pursuant to the requirements of s 723.012, or in a disclosure statement pursuant to s. 723.013, as a lot intended for the placement of a mobile home.

(10) "Mobile home lot rental agreement" or "rental agreement" means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.

(11) "Mobile home owner" “mobile homeowner,” "home owner" or “homeowner” means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.

(12) "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

(13) "Mobile home park owner" or "park owner" means an owner or operator of a mobile home park.

(14) "Mobile home subdivision" means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

(15) “Offering circular” has the same meaning as the term “prospectus” as it is used in this chapter.

(16) "Operator of a mobile home park" means either a person who establishes a mobile home park on land that is leased from another person or a person who has been delegated the authority to act as the park owner in matters relating to the administration and management of the mobile home park, including, but not limited to, authority to make decisions relating to the mobile home park.

(17) "Pass-through charge" means the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.

(18) “Proportionate share” as used in subsection (17) means an amount calculated by dividing equally among the affected developed lots in the park the total costs for the necessary and actual direct costs and impact or hookup fees incurred for governmentally mandated capital improvements serving the recreational and common areas and all affected developed lots in the park.

(19) "Resale agreement" means a contract in which a mobile home owner authorizes the mobile home park owner, or the park owner's designee, to act as exclusive agent for the sale of the homeowner's mobile home for a commission or fee.

(20) "Unreasonable" means arbitrary, capricious, or inconsistent with this chapter.

(21) "User fees" means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.

## 723.004 Legislative intent; preemption of subject matter.——

(1) The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected. This chapter is created for the purpose of regulating the factors unique to the relationship between mobile home owners and mobile home park owners in the circumstances described herein. It recognizes that when such inequalities exist between mobile home owners and mobile home park owners as a result of such unique factors, regulation to protect those parties to the extent that they are affected by the inequalities, while preserving and protecting the rights of both parties, is required.

(2) There is hereby expressly preempted to the state all regulation and control of mobile home lot rents in mobile home parks and all those other matters and things relating to the landlord-tenant relationship treated by or falling within the purview of this chapter. Every unit of local government is prohibited from taking any action, including the enacting of any law, rule, regulation, or ordinance, with respect to the matters and things hereby preempted to the state.

(3) It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.

(4) If any provision of this chapter is held invalid, it is the legislative intent that the preemption by this section shall no longer be applicable to the provision of the chapter held invalid.

(5) Nothing in this chapter shall be construed to prevent the enforcement of a right or duty under this section, s. 723.022, s. 723.023, s. 723.031, s. 723.032, s. 723.033, s. 723.035, s. 723.037, s. 723.038, s. 723.061, s. 723.0615, s. 723.062, s. 723.063, or s. 723.081 by civil action after the party has exhausted its administrative remedies, if any.

## 723.005 Regulation by division.——

The division has the power and duty to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the rental, development, and sale of mobile home parks. However, the division does not have the power or duty to enforce mobile home park rules and regulations or to enforce the provisions of ss. 723.022, 723.023, and 723.033.

## 723.006 Powers and duties of division.——

In performing its duties, the division has the following powers and duties:

(1) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(2) The division may require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(3) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any book, document, or other tangible thing and the identity and location of any person having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon a person's failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance. Financial records of a mobile home park acquired by the division pursuant to any investigation under this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, if the division, pursuant to a consent order, final order, or cease and desist order, makes a finding that a violation of this chapter has occurred, the financial records acquired by the division specifically relevant to that finding are no longer exempt as provided for in this subsection, unless otherwise made specifically exempt by law. “Financial records” means any financial information which is owned or controlled by the mobile home park owner and is not otherwise required to be filed with the division under other sections of this chapter.

(4) The division is authorized to prepare information to assist prospective mobile home owners and mobile home park owners in assessing the rights, privileges, and duties pertaining hereto.

(5) Notwithstanding any remedies available to mobile home owners, mobile home park owners, and homeowners' associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners' association, or its assignee or agent, as follows:

(a) The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

(b) The division may issue an order requiring the mobile home park owner, or its assignee or agent, to cease and desist from an unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. The affirmative action may include the following:

1. Refunds of rent increases, improper fees, charges and assessments, including pass-throughs and pass-ons collected in violation of the terms of this chapter.

2. Filing and utilization of documents which correct a statutory or rule violation.

3. Reasonable action necessary to correct a statutory or rule violation.

(c) In determining the amount of civil penalty or affirmative action to be imposed under this section, if any, the division must consider the following factors:

1. The gravity of the violation.

2. Whether the person has substantially complied with the provisions of this chapter.

3. Any action taken by the person to correct or mitigate the violation of this chapter.

(d) The division may bring an action in circuit court on behalf of a class of mobile home owners, mobile home park owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

(e) 1. The division may impose a civil penalty against a mobile home park owner or homeowners' association, or its assignee or agent, for any violation of this chapter, a properly adopted park rule or regulation, or a rule adopted pursuant hereto. A penalty may be imposed on the basis of each separate violation and, if the violation is a continuing one, for each day of continuing violation, but in no event may the penalty for each separate violation or for each day of continuing violation exceed $5,000. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

2. If a violator fails to pay the civil penalty, the division shall thereupon issue an order directing that such violator cease and desist from further violation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If a homeowners' association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in which the violation occurred.

(6) With regard to any written complaint alleging a violation of any provision of this chapter or any rule adopted pursuant thereto, the division shall, within 30 days after receipt of a written complaint, notify, in writing, the person who filed the complaint of the status of the complaint. Thereafter, the division shall notify the complainant of the status of the investigation within 90 days after receipt of the written complaint. Upon completion of the investigation, the division shall notify, in writing, the complainant and the party complained against of the results of the investigation and disposition of the complaint.

(7) The division has authority to adopt rules pursuant to ss. 120.54 and 120.536(1) to implement and enforce the provisions of this chapter.

(8) The division has the authority by rule to authorize amendments permitted by this chapter to an approved prospectus or offering circular.

(9) The division shall adopt rules establishing a category of minor violations of this chapter or rules promulgated pursuant hereto. A minor violation means a violation which does not endanger the health, safety or welfare of mobile home residents, which does not involve the failure to make full and fair disclosure, or which does not cause economic harm to mobile home park residents.

(10) The division is authorized to require disclosures to fully and fairly disclose all matters required by this chapter. If a park owner or operator, in good faith, has attempted to comply with the requirements of this chapter, and if, in fact, the park owner or operator has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

(11) Upon adoption of rules establishing minor violations and a determination by the division that the violation is a minor violation, the division may levy a civil penalty of up to $250 but shall not require a refund of rent increases, fees, charges or assessments, including pass-through and pass-ons collected from mobile home owners. Until rules have been adopted as provided in this section, the enforcement procedures of the division in existence on the effective date of this act shall be in effect.

(12) The division shall approve training and educational programs for board members of mobile home owners’ associations formed and operated pursuant to s. 723.075(1) and mobile home owners. The training may, at the division’s discretion, include web-based electronic media and live training and seminars in various locations throughout the state.

(13) The division may review and approve educational curriculums and training programs for board members and mobile home owners to be offered by providers and shall maintain a current list of approved programs and providers, and make such lists available to board members in a reasonable and cost-effective manner. The cost of such programs shall be borne by the providers of the programs. The division shall establish a fee structure for the approved training programs sufficient to recover any cost incurred by the division in operating this program.

(14) Required education curriculum information for board member and mobile home owner training shall include:

(a) The provider of the training programs, which shall include the following information regarding its training and educational programs:

1. A price list, if any, for the programs and copies of all materials.

2. The physical location where programs will be available, if not webbased.

3. Dates when programs will be offered.

4. The curriculum of the program to be offered.

(b) The programs shall provide information about statutory and regulatory matters relating to the board of directors of the homeowners’ association and their responsibilities to the association and to the mobile home owners in the mobile home park.

(c) Programs and materials may not contain editorial comments.

(d) The division has the right to approve and require changes to such education and training programs.

(15) The division shall adopt rules to implement the board member training requirements for educational programs as provided in this chapter. The Department of Business and Professional Regulation shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by October 1, 2016. Such rules shall include the requirements for content and notice of the board member training program to assure that providers meet minimum training requirements.

## 723.007 Annual fees; surcharge.——

(1) Each mobile home park owner shall pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within a mobile home park which he or she owns. If the fee is not paid by December 31, the mobile home park owner shall be assessed a penalty of 10 percent of the amount due, and he or she shall not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(2) There is levied on each annual fee imposed under subsection (1) a surcharge in the amount of $1. The surcharge shall be collected in the same manner as the annual fee and shall be deposited in the Florida Mobile Home Relocation Trust Fund. Collection of the surcharge shall begin during the first calendar year after this subsection takes effect. This surcharge may not be imposed during the next calendar year if the balance in the trust fund exceeds $10 million on June 30. The surcharge shall be reinstated in the next calendar year if the balance in the trust fund is below $6 million on June 30. The surcharge imposed by this subsection may not be imposed as a separate charge regardless of any disclosure in the prospectus.

## 723.008 Applicability of chapter 212 to fees, penalties, and fines under this chapter.——

The same duties and privileges imposed by chapter 212 upon dealers in tangible property respecting the collection and remission of tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules of the enforcing agency in the administration of that chapter apply to and are binding upon all persons who are subject to the fee, penalty, and fine provisions of this chapter. However, the provisions of s. 212.12(1) do not apply to this chapter.

## 723.009 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.——

All proceeds from the fees, penalties, and fines imposed pursuant to this chapter shall be deposited into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund created by s. 718.509. Moneys in this fund, as appropriated by the Legislature pursuant to chapter 216, may be used to defray the expenses incurred by the division in administering the provisions of this chapter.

## 723.011 Disclosure prior to rental of a mobile home lot; prospectus, filing, approval.——

(1) (a) In a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the division. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner shall deliver to the homeowner a prospectus approved by the division. This subsection does not invalidate those lot rental agreements for which an approved prospectus was required to be delivered and which was delivered on or before July 1, 1986, if the mobile home park owner had:

1. Filed a prospectus with the division prior to entering into the lot rental agreement;

2. Made a good faith effort to correct deficiencies cited by the division by responding within the time limit set by the division, if one was set; and

3. Delivered the approved prospectus to the mobile home owner within 45 days of approval by the division.

This paragraph does not preclude the finding that a lot rental agreement is invalid on other grounds and does not limit any rights of a mobile home owner or preclude a mobile home owner from seeking any remedies allowed by this chapter, including a determination that the lot rental agreement or any part thereof is unreasonable.

(b) The division shall determine whether the proposed prospectus or offering circular is adequate to meet the requirements of this chapter and shall notify the park owner by mail, within 45 days after receipt of the document, that the division has found that the prospectus or offering circular is adequate or has found specified deficiencies. If the division does not make either finding within 45 days, the prospectus shall be deemed to have been found adequate.

(c) 1. Filings for mobile home parks in which lots have not been offered for lease prior to June 4, 1984, shall be accompanied by a filing fee of $10 per lot offered for lease by the park owner; however, the fee shall not be less than $100.

2. Filings for mobile home parks in which lots have been offered for lease prior to the effective date of this chapter shall be accompanied by a filing fee as follows:

a. For a park in which there are 26—50 lots: $100.

b. For a park in which there are 51—100 lots: $150.

c. For a park in which there are 101—150 lots: $200.

d. For a park in which there are 151—200 lots: $250.

e. For a park in which there are 201 or more lots: $300.

(d) The division shall maintain copies of each prospectus and all amendments to each prospectus which are considered adequate by the division. The division shall provide copies of documents requested in writing under this subsection within 10 days after the written request is received.

(2) The park owner shall furnish a copy of the prospectus or offering circular together with all of the exhibits thereto to each prospective lessee. Delivery shall be made prior to execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days. However, the park owner is not required to furnish a copy of the prospectus or offering circular if the tenancy is a renewal of a tenancy and the mobile home owner has previously received the prospectus or offering circular.

(3) The prospectus or offering circular together with its exhibits is a disclosure document intended to afford protection to homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.

(4) With regard to a tenancy in existence on the effective date of this chapter, the prospectus or offering circular offered by the mobile home park owner must contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and may not require any mobile home owner to install any permanent improvements, except that the mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus.

(5) The mobile home park owner may request that the homeowner sign a receipt indicating that the homeowner has received a copy of the prospectus, the rules and regulations, and other pertinent documents so long as any such documents are clearly identified in the receipt itself. Such a receipt shall indicate nothing more than that the documents identified herein have been received by the mobile home owner. The receipt, if requested, shall be signed at the time of delivery of the identified documents. If the homeowner refuses to sign the receipt, the park owner shall still deliver to the homeowner a copy of the prospectus, rules and regulations, and any other documents which otherwise would have been delivered upon execution of the receipt. However, the homeowner shall thereafter be barred from claiming that the park owner has failed to deliver such documents. The refusal of the homeowner to sign the receipt shall under no circumstances constitute a ground for eviction of the homeowner or of a mobile home or for the imposition of any other penalty.

## 723.012 Prospectus or offering circular.——

The prospectus or offering circular, which is required to be provided by s. 723.011, must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the mobile home park.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND YOUR FINANCIAL OBLIGATIONS IN LEASING A MOBILE HOME LOT. MAKE SURE THAT YOU READ THE ENTIRE DOCUMENT AND SEEK LEGAL ADVICE IF YOU HAVE ANY QUESTIONS REGARDING THE INFORMATION SET FORTH IN THIS DOCUMENT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE LESSEE SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS SHOULD NOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE PARK OWNER OR OPERATOR. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

4. UPON DELIVERY OF THE PROSPECTUS TO A PROSPECTIVE LESSEE, THE RENTAL AGREEMENT IS VOIDABLE BY THE LESSEE FOR A PERIOD OF 15 DAYS.

(2) The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular in a summary form.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text, the following information:

(a) The name and address or location of the mobile home park.

(b) The name and address of the person authorized to receive notices and demands on the park owner's behalf.

(c) A description of the mobile home park property, including, but not limited to:

1. The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.

2. The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

(5) A description of the recreational and other common facilities, if any, that will be used by the mobile home owners, including, but not limited to:

(a) The number of buildings and each room thereof and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, and approximate deck size and capacity and whether heated.

(c) All other facilities and permanent improvements that will serve the mobile home owners.

(d) A general description of the items of personal property available for use by the mobile home owners.

(e) A general description of the days and hours that facilities will be available for use.

(f) A statement as to whether all improvements are complete and, if not, their estimated completion dates.

If a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile home owners.

(6) The arrangements for management of the park and maintenance and operation of the park property and of other property that will serve the mobile home owners and the nature of the services included.

(7) A description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.

(8) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, cable television, water supply, and storm drainage, will be provided, and the person or entity furnishing them. The services and the lot rental amount or user fees charged by the park owner for the services provided by the park owner shall also be disclosed.

(9) An explanation of the manner in which the lot rental amount will be raised, including, but not limited to:

(a) Notification of the mobile home owner at least 90 days in advance of the increase.

(b) Disclosure of any factors which may affect the lot rental amount, including, but not limited to:

1. Water rates.

2. Sewer rates.

3. Waste disposal rates.

4. Maintenance costs, including costs of deferred maintenance.

5. Management costs.

6. Property taxes.

7. Major repairs or improvements.

8. Any other fees, costs, entrance fees, or charges to which the mobile home owner may be subjected.

(c) Disclosure of the manner in which the pass-through charges will be assessed.

(10) Disclosure of all user fees currently charged for services offered which the homeowner may elect to incur and the manner in which the fees will be increased.

(11) The park rules and regulations and an explanation of the manner in which park rules or regulations will be set, changed, or promulgated.

(12) A statement describing the existing zoning classification of the park property and permitted uses under such classification.

(13) A statement of the nature and type of zoning under which the mobile home park operates, the name of the zoning authority which has jurisdiction over the land comprising the mobile home park, and, if applicable, a detailed description of any definite future plans which the park owner has for changes in the use of the land comprising the mobile home park.

(14) Copies of the following, to the extent they are applicable, as exhibits:

(a) The ground lease or other underlying leases of the mobile home park or a summary of the contents of the lease or leases when copies of the same have been filed with the division.

(b) A copy of the mobile home park lot layout showing the location of the recreational areas and other common areas.

(c) All covenants and restrictions and zoning which will affect the use of the property and which are not contained in the foregoing.

(d) A copy of the rental agreement or agreements to be offered for rental of mobile home lots.

## 723.013 Written notification in the absence of a prospectus.——

A mobile home park owner who enters into a rental agreement in which a prospectus is not provided shall give written notification to the mobile home owner of the following information prior to occupancy:

(1) The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he or she has for future changes in the use of the land comprising the mobile home park or a portion thereof.

(2) The name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf.

(3) All fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

## 723.014 Failure to provide prospectus or offering circular prior to occupancy.——

(1) If a prospectus or offering circular was not provided to the prospective lessee prior to execution of the lot rental agreement or prior to initial occupancy of a new mobile home, the rental agreement is voidable by the lessee until 15 days after the receipt by the lessee of the prospectus or offering circular and all exhibits thereto.

(2) To cancel the rental agreement, the mobile home owner shall deliver written notice to the park owner within 15 days after receipt of the prospectus or offering circular and shall thereupon be entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.

## 723.016 Advertising materials; oral statements.——

(1) All advertising materials for, used by, or promoting any mobile home park shall be filed with the division by the developer, park owner, or mobile home dealer within 30 days of the end of each calendar quarter in which it was used, unless the material has been previously filed. The calendar quarters shall end on March 31, June 30, September 30, and December 31 of each year.

(2) The term "advertising materials" includes:

(a) Promotional brochures, pamphlets, advertisements, or other materials disseminated to the public in connection with the sale of a new mobile home or lease of a mobile home lot.

(b) Billboards and other signs posted on and off the premises.

(3) The following "advertising materials" are exempt from the filing requirements of this section: telephone directories, business cards, items placed solely on bulletin boards in a mobile home park, and correspondence in response to inquiries by individuals.

(4) No advertising materials or oral statement made by any developer, park owner, or mobile home dealer shall:

(a) Misrepresent a fact or create a false or misleading impression regarding the mobile home or mobile home park.

(b) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any statement previously made or as a means of obscuring a material fact.

(c) Misrepresent the size, nature, extent, qualities, or characteristics of the offered facilities.

(d) Misrepresent the nature or extent of any service incident to the tenancy.

(5) The division shall not impose a civil penalty in excess of $250 per advertisement for each instance of the untimely filing of advertising materials.

## 723.017 Publication of false or misleading information; remedies.——

Any person who pays anything of value toward the purchase of a mobile home or placement of a mobile home in a mobile home park located in this state in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the park owner or developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, shall have a cause of action to rescind the contract or collect damages from the developer, park owner, or mobile home dealer for her or his loss.

## 723.021 Obligation of good faith and fair dealings.——

Every rental agreement or duty within this chapter imposes an obligation of good faith and fair dealings in its performance or enforcement. Either party to a dispute under this chapter may seek an order finding the other party has not complied with the obligations of good faith and fair dealings. Upon such a finding, the court shall award reasonable costs and attorney fees to the prevailing party for proving the noncompliance.

## 723.022 Mobile home park owner's general obligations.——

A mobile home park owner shall at all times:

(1) Comply with the requirements of applicable building, housing, and health codes.

(2) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.

(3) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents and their guests.

(4) Maintain utility connections and systems for which the park owner is responsible in proper operating condition.

(5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

## 723.023 Mobile home owner's general obligations.——

A mobile home owner shall at all times:

(1) At all times comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes s, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

(2) At all times keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.

(3) At all times comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

(4) Receive written approval from the mobile home park owner before making any exterior modification or addition to the home

(5) When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

## 723.024 Compliance by mobile home park owners and mobile home owners.—Notwithstanding any other provision of this chapter or of any local law, ordinance, or code:

(1) If a unit of local government finds that a violation of a local code or ordinance has occurred, the unit of local government shall cite the responsible party for the violation and enforce the citation under its local code and ordinance enforcement authority.

(2) A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under s. 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under s. 723.023.723.025 Park owner's access to mobile home and mobile home lot.——

A mobile home park owner has no right of access to a mobile home unless the mobile home owner's prior written consent has been obtained or unless to prevent imminent danger to an occupant of the mobile home or to the mobile home. Such consent may be revoked in writing by the mobile home owner at any time. The park owner has, however, the right of entry onto the lot for purposes of repair and replacement of utilities and protection of the mobile home park at all reasonable times, but not in such manner or at such time as to interfere unreasonably with the mobile home owner's quiet enjoyment of the lot.

## 723.027 Persons authorized by park owner to receive notices.——

Any person authorized by a park owner to receive notices and demands on the park owner's behalf retains such authority until the mobile home owner is notified otherwise. All notices of such names and addresses or changes made thereto shall be delivered to the mobile home owner's residence or to another address specified in writing by the mobile home owner.

## 723.031 Mobile home lot rental agreements.——

(1) No rental agreement shall contain any rule or regulation prohibited by this chapter, nor shall it provide for promulgation of any rule or regulation inconsistent with this chapter or amendment of any rule or regulation inconsistently with this chapter.

(2) Whether or not a tenancy is covered by a valid written rental agreement, the required statutory provisions shall be deemed to be a part of the rental agreement.

(3) The homeowner shall have no financial obligation to the park owner as a condition of occupancy in the park, except the lot rental amount. The parties may agree otherwise as to user fees which the homeowner chooses to incur. No user fees shall be charged by the park owner to the mobile home owner for any services which were previously provided by the park owner and included in the lot rental amount unless there is a corresponding decrease in the lot rental amount.

(4) No rental agreement shall be offered by a park owner for a term of less than 1 year, and if there is no written rental agreement, no rental term shall be less than 1 year from the date of initial occupancy; however, the initial term may be less than 1 year in order to permit the park owner to have all rental agreements within the park commence at the same time.

Thereafter, all terms shall be for a minimum of 1 year.

(5) The rental agreement must contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement must be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable, provided that, pursuant to s. 723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. A lot rental amount may not be increased during the term of the lot rental agreement, except:

(a) When the manner of the increase is disclosed in a lot rental agreement with a term exceeding 12 months and which provides for such increases not more frequently than annually.

(b) For pass-through charges as defined in s. 723.003.

(c) That a charge may not be collected which results in payment of money for sums previously collected as part of the lot rental amount. The provisions hereof notwithstanding, the mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, provided that the ad valorem property taxes, non-ad valorem assessments, and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such ad valorem taxes, non-ad valorem assessments, or utility charges, or increases of either, was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a separate charge or a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term “non-ad valorem assessments” has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner’s payment of the charge after the date such charges become delinquent. A mobile home park owner is prohibited from charging or collecting from the mobile home owners any sum for ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

(d) If a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

(6) Except for pass-through charges, as defined in this chapter, failure on the part of the mobile home park owner or developer to disclose fully all fees, charges, or assessments prior to tenancy, unless it can be shown that such fees, charges, or assessments have been collected as a matter of custom between the mobile home park owner and the mobile home owner, shall prevent the park owner or operator from collecting said fees, charges, or assessments; and refusal by the mobile home owner to pay any such fee, charge, or assessment shall not be used by the park owner or developer as a cause for eviction in any court of law.

(7) No park owner may increase the lot rental amount until an approved prospectus has been delivered if one is required. This subsection shall not be construed to prohibit those increases in lot rental amount for those lot rental agreements for which an approved prospectus was required to be delivered and which was delivered on or before July 1, 1986, if the mobile home park owner had:

(a) Filed a prospectus with the division prior to entering into the lot rental agreement;

(b) Made a good faith effort to correct deficiencies cited by the division by responding within the time limit set by the division, if one was set; and

(c) Delivered the approved prospectus to the mobile home owner within 45 days of approval by the division. This subsection shall not preclude the finding that a lot rental increase is invalid on other grounds and shall not be construed to limit any rights of a mobile home owner or to preclude a mobile home owner from seeking any remedies allowed by this chapter, including a determination that the lot rental agreement or any part thereof is unreasonable.

(8) If a mobile home owner has deposited or advanced money on a rental agreement as security for performance of the rental agreement, which money is held in excess of 3 months by the mobile home park owner or his or her agent, such deposit shall be handled pursuant to s. 83.49.

(9) No rental agreement shall provide for the eviction of a mobile home owner on a ground other than one contained in s. 723.061.

(10) The rules and regulations and the prospectus shall be deemed to be incorporated into the rental agreement.

## 723.032 Prohibited or unenforceable provisions in mobile home lot rental agreements.——

(1) A mobile home lot rental agreement may provide a specific duration with regard to the amount of rental payments and other conditions of the tenancy, but the rental agreement shall neither provide for, nor be construed to provide for, the termination of any tenancy except as provided in s. 723.061.

(2) Any provision in the rental agreement is void and unenforceable to the extent that it attempts to waive or preclude the rights, remedies, or requirements set forth in this chapter or arising under law.

## 723.033 Unreasonable lot rental agreements; increases, changes.——

(1) If the court, as a matter of law, finds a mobile home lot rental amount, rent increase, or change, or any provision of the rental agreement, to be unreasonable, the court may:

(a) Refuse to enforce the lot rental agreement.

(b) Refuse to enforce the rent increase or change.

(c) Enforce the remainder of the lot rental agreement without the unreasonable provision.

(d) Limit the application of the unreasonable provision so as to avoid any unreasonable result.

(e) Award a refund or a reduction in future rent payments.

(f) Award such other equitable relief as deemed necessary.

(2) When it is claimed or appears to the court that a lot rental amount, rent increase, or change, or any provision thereof, may be unreasonable, the parties shall be afforded a reasonable opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination.

(3) For the purposes of this section, a lot rental amount that is in excess of market rent shall be considered unreasonable.

(4) Market rent means that rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.

(5) In determining market rent, the court may consider rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.

(6) In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.

(7) An arbitrator or mediator under ss. 723.037, 723.038, and 723.0381 shall employ the same standards as set forth in this section.

## 723.035 Rules and regulations.——

(1) A copy of all rules and regulations shall be posted in the recreation hall, if any, or in some other conspicuous place in the park.

(2) No rule or regulation shall provide for payment of any fee, fine, assessment, or charge, except as otherwise provided in the prospectus or offering circular filed under s. 723.012, if one is required to be provided, and until after the park owner has complied with the procedure set forth in s. 723.037.

## 723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.——

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-day notice. The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. However, this requirement does not authorize the release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose The home owner’s right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners’ committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90—day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge must state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(2) Notice as required by this section shall, in addition to the information required in subsection (1), only be required to include the dollar amount of the relevant portions of the present lot rental amount that are being increased and the dollar amount of the proposed increases in lot rental amount if there is an increase in the lot rental amount, the reduction in services or utilities, or the change in rules and regulations and the effective date thereof.

(3) The park owner shall file annually with the division a copy of any notice of a lot rental amount increase. The notice shall be filed on or before January 1 of each year for any notice given during the preceding year. If the actual increase is an amount less than the proposed amount stated in the notice, the park owner shall notify the division of the actual amount of the increase within 30 days of the effective date of the increase or at the time of filing, whichever is later.

(4) (a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting. . The committee shall address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

(b) 1. At the meeting, the park owner or subdivision developer shall in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed. The park owner or subdivision developer may not limit the discussion of the reasons for the change to generalities only, such as, but not limited to, increases in operational costs, changes in economic conditions, or rents charged by comparable mobile home parks. For example, if the reason for an increase in lot rental amount is an increase in operational costs, the park owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased, and the amount of the decrease. If an increase is based upon the lot rental amount charged by comparable mobile home parks, the park owner shall disclose, and provide in writing to the committee at or before the meeting, the name, address, lot rental amount, and any other relevant factors relied upon by the park owner, such as facilities, services, and amenities, concerning the comparable mobile home parks. The information concerning comparable mobile home parks to be exchanged by the parties is to encourage a dialogue concerning the reasons used by the park owner for the increase in lot rental amount and to encourage the home owners to evaluate and discuss the reasons for those changes with the park owner. The park owner shall prepare a written summary of the material factors and retain a copy for 3 years. The park owner shall provide the committee a copy of the summary at or before the meeting.

2. The park owner shall not limit the comparable mobile home park disclosure to those mobile home parks that are owned or operated by the same owner or operator as the subject park, except in certain circumstances, which include, but are not limited to:

a. That the market area for comparable mobile home parks includes mobile home parks owned or operated by the same entity that have similar facilities, services, and amenities;

b. That the subject mobile home park has unique attributes that are shared with similar mobile home parks;

c. That the mobile home park is located in a geographic or market area that contains few comparable mobile home parks; or

d. That there are similar considerations or factors that would be considered in such a market analysis by a competent professional and would be considered in determining the valuation of the market rent.

(c) If the committee disagrees with a park owner’s lot rental amount increase based upon comparable mobile home parks, the committee shall disclose to the park owner the name, address, lot rental amount, and any other relevant factors relied upon by the committee, such as facilities, services, and amenities, concerning the comparable mobile home parks. The committee shall provide to the park owner the disclosure, in writing, within 15 days after the meeting with the park owner, together with a request for a second meeting. The park owner shall meet with the committee at a mutually convenient time and place within 30 days after receipt by the park owner of the request from the committee to discuss the disclosure provided by the committee. At the second meeting, the park owner may take into account the information on comparable parks provided by the committee, may supplement the information provided to the committee at the first meeting, and may modify his or her position, but the park owner may not change the information provided to the committee at the first meeting.

(d) The committee and the park owner may mutually agree, in writing, to extend or continue any meetings required by this section.

(e) Either party may prepare and use additional information to support its position during or subsequent to the meetings required by this section.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

(5) (a) Within 30 days after the date of the last scheduled meeting described in subsection (4), the homeowners may petition the division to initiate mediation of the dispute pursuant to s. 723.038 if a majority of the affected homeowners have designated, in writing, that:

1. The rental increase is unreasonable;

2. The rental increase has made the lot rental amount unreasonable;

3. The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or

4. The change in the rules and regulations is unreasonable.

(b) A park owner, within the same time period, may also petition the division to initiate mediation of the dispute.

(c) When a dispute involves a rental increase for different home owners and there are different rates or different rental terms for those home owners, all such rent increases in a calendar year for one mobile home park may be considered in one mediation proceeding.

(d) At mediation, the park owner and the homeowners committee may supplement the information provided to each other at the meetings described in subsection (4) and may modify their position, but they may not change the information provided to each other at the first and second meetings.

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to litigation of any dispute.

(6) If a party requests mediation and the opposing party refuses to agree to mediate upon proper request, the party refusing to mediate shall not be entitled to attorney fees in any action relating to a dispute described in this section.

(7) The term “parties,” for purposes of mediation under this section and s. 723.038, means a park owner and a homeowners’ committee selected pursuant to this section.

## 723.038 Dispute settlement; mediation.——

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings.

(2) The division upon petition shall appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify the division in writing that they have selected a mediator. A person appointed by the division shall be a qualified mediator from a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.

(3) A mediator appointed by the division or selected by the parties shall comply with the rules adopted by the division. The mediator shall also notify the division in writing within 10 days after the conclusion of the mediation, that the mediation has been concluded.

(4) Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division. The parties may accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute. The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties, within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used shall be refunded to the parties.

(5) The parties may agree to select their own mediator, and such mediation shall be governed by the rules of procedure established by the division. The parties, by agreement, may waive mediation, or the petitioning party may withdraw the petition prior to mediation. Upon the conclusion of the mediation, the mediator shall notify the division that the mediation has been concluded.

(6) No resolution arising from a mediation proceeding as provided for in s. 723.037 or this section shall be deemed final agency action. Any party, however, may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The court shall consider such resolution or agreement to be a contract for the purpose of providing a remedy to the complaining party.

(7) Mediation pursuant to this section is an informal and nonadversarial process. Either party may submit to the opposing party at least 10 days prior to mediation a written request for information.

(8) Each party involved in the mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding, whether or not the dispute was successfully resolved. This subsection shall not be construed to prevent or inhibit the discovery or admissibility of any information which is otherwise subject to discovery or admission under applicable law or rules of court. There is no privilege as to communications made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or a fraud. Nothing in this subsection shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

(9) A mediator appointed pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge.

## 723.0381 Civil actions; arbitration.——

(1) After mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court.

(2) The court may refer the action to nonbinding arbitration pursuant to s. 44.103 and the Florida Rules of Civil Procedure, The court shall order the hearing to be held informally with presentation of testimony kept to a minimum and matters presented to the arbitrators primarily through the statements and arguments of counsel. The court shall assess the parties equally to pay the compensation awarded to the arbitrators if neither party requests a trial de novo. If a party has filed for a trial de novo, the party shall be assessed the arbitration costs, court costs, and other reasonable costs of the opposing party, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If subsequent to arbitration a party files for a trial de novo, the arbitration decision may be made known to the judge only after he or she has entered his or her order on the merits.

## 723.041 Entrance fees; refunds; exit fees prohibited; replacement homes.——

(1) (a) Entrance fees on new mobile home placements shall be specifically set forth in the prospectus or offering circular. Any such fee shall be clearly identified in writing at the time that the rental agreement is signed or otherwise concluded.

(b) The failure on the part of a mobile home park owner or developer to disclose fully all fees, charges, or assessments shall prevent the park owner or operator from collecting such fees, charges, or assessments; and a refusal by the mobile home owner to pay any undisclosed charge shall not be used by the park owner or developer as a cause for eviction in any court of law.

(c) It is unlawful for any mobile home park owner or developer to make any agreement, written or oral, whereby the fees authorized in this subsection will be split between such mobile home park owner or developer and any mobile home dealer, unless otherwise provided for in this chapter. Any person who violates any of the provisions of this paragraph is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) With respect to the first rental agreement for a mobile home lot in a developing park, the park has the right to condition such initial rental agreement upon the prospective resident's purchasing the mobile home from a dealer chosen by the park developer. A park developer may also buy down rentals on the initial rental agreement of a mobile home lot, and such buy-downs may be split between the owner of a developing park and the dealer.

(e) Whenever an entrance fee is charged by a mobile home park owner or developer for the entrance of a mobile home into the park and such mobile home is moved from the park before 2 years have passed from the date on which the fee was charged, the fee shall be prorated and a portion returned as follows:

1. The entrance fee shall be refunded at the rate of one twenty-fourth of such fee for each month short of 2 years that the mobile home owner maintained his or her mobile home within the park.

2. The entrance fee shall be refunded within 15 days after the mobile home has been physically moved from the park.

No new entrance fee may be charged for a move within the same park. This paragraph does not apply in instances in which the mobile home owner is evicted on the ground of nonpayment of rent; violation of a federal, state, or local ordinance; or violation of a properly promulgated park rule or regulation or leaves before the expiration date of his or her rental agreement. However, the sums due to the park by the mobile home owner may be offset against the balance due on the entrance fee.

(2) No person shall be required by a mobile home park owner to pay an exit fee upon termination of his or her residency.

(3) No entrance fee may be charged by the park owner to the purchaser of a mobile home situated in the park that is offered for sale by a resident of the park.

(4) Except as expressly preempted by the requirements of the Department of Highway Safety and Motor Vehicles, a mobile home owner or the park owner shall be authorized pursuant to this section to site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park.

(5) A mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.

(6) This section does not limit the regulation of the uniform firesafety standards established under s. 633.206, but supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

## 723.042 Provision of improvements.——

A person may not be required by a mobile home park owner or developer, as a condition of residence in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.012(7) prior to occupancy in the mobile home park.

## 723.043 Purchase of equipment.——

No mobile home park owner or developer shall require a mobile home owner of the mobile home park to purchase from such mobile home park owner underskirting, equipment for tying down a mobile home, or any other equipment required by law, local ordinance, or regulation of the mobile home park. However, the park developer or park owner may determine by rule or regulation the style or quality of such equipment to be purchased by the mobile home owner from the vendor of the mobile home owner's choosing, provided the style or quality has been disclosed in the prospectus given by the park developer or park owner to the mobile home owner.

## 723.044 Interference with installation of appliances or interior improvements.——

A mobile home park owner or developer shall not charge any resident who chooses to install an electric or gas appliance in her or his mobile home an additional fee solely on the basis of such installation or restrict the installation, service, or maintenance of any such appliance or the making of any interior improvement in such mobile home, so long as the installation or improvement is in compliance with applicable building codes and other provisions of law.

## 723.045 Sale of utilities by park owner or developer.——

No mobile home park owner or developer who purchases electricity or gas (natural, manufactured, or similar gaseous substance) from any public utility or municipally owned utility or who purchases water from a water system for the purpose of supplying or reselling the electricity, gas, or water to any other person to whom she or he leases, lets, rents, subleases, sublets, or subrents the premises upon which the electricity, gas, or water is to be used shall charge, demand, or receive, directly or indirectly, any amount for the resale of such electricity, gas, or water greater than that amount charged by the public utility or municipally owned utility from which the electricity or gas was purchased or by the public water system from which the water was purchased. However, as concerns the distribution of water, the park owner may charge for maintenance actually incurred and administrative costs. This section does not apply to a park owner who is regulated pursuant to chapter 367 or by a county water ordinance.

## 723.046 Capital costs of utility improvements.——

In the event that the costs for capital improvements for a water or sewer system are to be charged to or to be passed through to the mobile home owners or if such expenses shall be required of mobile home owners in a mobile home park owned all or in part by the residents, any such charge exceeding $200 per mobile home owner may, at the option of the mobile home owner, be paid in full within 60 days from the notification of the assessment, or amortized with interest over the same duration and at the same rate as allowed for a single-family home under the local government ordinance. If no amortization is provided for a single house, then the period of amortization by the municipality, county, or special district shall be not less than 8 years. The amortization requirement established herein shall be binding upon any municipality, county, or special district serving the mobile home park.

## 723.051 Invitees rights and obligations.——

(1) An invitee of a mobile home owner shall have ingress and egress to and from the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is null and void.

(2) All guests, family members, or invitees are required to abide by properly promulgated rules and regulations.

(3) For the purposes of this section, an "invitee" is defined as a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

## 723.054 Right of mobile home owners to peaceably assemble; right to communicate.——

(1) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners to peaceably assemble in an open public meeting for any lawful purpose, at reasonable times and in a reasonable manner, in the common areas or recreational areas of the mobile home park.

(2) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners or tenants to communicate or assemble among themselves, at reasonable times and in a reasonable manner, for the purpose of discussing any problems relative to the mobile home park. Such discussions may be held in the common areas or recreational areas of the park, including halls or centers, or in any resident's mobile home. In addition, the park owner or developer may not unreasonably restrict the use of any facility, including the use of utilities, when requested.

(3) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall prohibit any mobile home owner from canvassing mobile home owners for the purposes described in this subsection.

For the purposes of this subsection, the term "canvassing" includes an oral or written request; the distribution, circulation, posting, or publication of a notice; or a general announcement requesting the payment of membership dues or other matters relevant to the membership of the park association, federation, or organization. Such canvassing shall be done at a reasonable time or times and in a reasonable manner. It is the intent of the Legislature, through the enactment of this subsection, to prohibit any owner, developer, or manager of a mobile home park from prohibiting free communication among mobile home owners or tenants in the guise of regulations or rules restricting or limiting canvassing for association, federation, or organization dues or other association, federation, or organization matters.

## 723.055 Right of mobile home owner to invite public officers, candidates for public office, or representatives of a tenant organization.——

No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of a mobile home owner to invite public officers, candidates who have qualified for public office, or officers or representatives of a tenant organization to appear and speak upon matters of public interest in the common areas or recreational areas of the mobile home park at reasonable times and in a reasonable manner in an open public meeting. The mobile home park owner, however, may enforce rules and regulations relating to the time, place, and scheduling of such speakers, which rules and regulations will protect the interests of the majority of the home owners.

## 723.056 Enforcement of right of assembly and right to hear outside speakers.——

Any mobile home owner who is prevented from exercising rights guaranteed by s. 723.054 or s. 723.055 may bring an action in the appropriate court having jurisdiction in the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any bylaw, rental agreement, or rule pertaining to a mobile home park which operates to deprive the home owner of such rights.

## 723.058 Restrictions on sale of mobile homes.——

(1) No mobile home park owner or subdivision developer shall make or enforce any rule, regulation, or rental agreement provision which denies or abridges the right of any mobile home owner or owner of a lot in a mobile home subdivision to sell his or her mobile home within the park or mobile home subdivision; which prohibits the mobile home owner or the owner of a lot in a mobile home subdivision from placing a "for sale" sign on or in his or her mobile home (except that the size, placement, and character of all signs are subject to properly promulgated and reasonable rules and regulations of the mobile home park or mobile home subdivision); or which requires the mobile home owner or the owner of a lot in a mobile home subdivision to remove the mobile home from the park or mobile home subdivision solely on the basis of the sale thereof.

(2) The park owner or subdivision developer shall not exact a commission or fee with respect to the price realized by the seller unless the park owner or subdivision developer has acted as agent for the mobile home owner or the owner of a lot in a mobile home subdivision in the sale pursuant to a written contract.

(3) No mobile home owner, owner of a lot in a mobile home subdivision, or purchaser of an existing mobile home located within a park or mobile home subdivision, as a condition of tenancy, or to qualify for tenancy, or to obtain approval for tenancy in a mobile home park or mobile home subdivision, shall be required to enter into, extend, or renew a resale agreement.

(4) No resale agreement shall be construed to be of perpetual or indefinite duration. Any duration shall be construed to expire 6 months following written notice from the homeowner to the park owner or subdivision developer informing the park owner or subdivision developer that the homeowner is placing his or her mobile home for sale, and requesting the park owner or subdivision developer to utilize his or her best efforts to sell the mobile home on the homeowner's behalf. Any extension or renewal of a resale agreement shall be in writing and shall be of specified duration.

(5) No mobile home park owner or subdivision developer shall impose a discriminatory increase in lot rental amount upon a mobile home owner, owner of a lot in a mobile home subdivision, or purchaser of an existing mobile home within the park or mobile home subdivision based upon the failure or refusal of such mobile home owner, owner of a lot in a mobile home subdivision, or purchaser to enter into, extend, or renew a resale agreement prohibited by subsection (3).

## 723.059 Purchaser of a Mobile Home within a Mobile Home Park.——

(1) The purchaser of a mobile home within a mobile home park may become a tenant of the park if such purchaser would otherwise qualify with the requirements of entry into the park under the park rules and regulations, subject to the approval of the park owner, but such approval may not be unreasonably withheld. The purchaser of the mobile home may cancel or rescind the contract for purchase of the mobile home if the purchaser’s tenancy has not been approved by the park owner 5 days before the closing of the purchase.

(2) Properly promulgated rules may provide for the screening of any prospective purchaser to determine whether or not such purchaser is qualified to become a tenant of the park.

(3) The purchaser of a mobile home who intends to become a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and may assume the seller’s prospectus. However, nothing herein shall prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus.

(4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the purchaser’s prospectus and this act.

(5) Lifetime leases and the renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the mobile home lot rental agreement or unless the transferee is the home owner's spouse. The right to an assumption of the lease by a spouse may be exercised only one time during the term of that lease.

## 723.061 Eviction; grounds, proceedings.——

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds:

(a) Nonpayment of the lot rental amount. If a mobile home owner or tenant, whichever is responsible, fails to pay the lot rental amount when due and if the default continues for 5 days after delivery of a written demand by the mobile home park owner for payment of the lot rental amount, the park owner may terminate the tenancy. However, if the mobile home owner or tenant, whichever is responsible, pays the lot rental amount due, including any late charges, court costs, and attorney fees, the court may, for good cause, deny the order of eviction, if provided such nonpayment has not occurred more than twice.

(b) Conviction of a violation of a federal or state law or local ordinance, if the which violation is may be deemed detrimental to the health, safety, or welfare of other residents of the mobile home park. The mobile home owner or mobile home tenant must vacate the premises within will have 7 days after from the date the that notice to vacate is delivered to vacate the premises. This paragraph constitutes shall be grounds to deny an initial tenancy of a purchaser of a home under pursuant to s. 723.061(1)(e) or to evict an unapproved occupant of a home.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter.

1. For the first violation of any properly promulgated rule or regulation, rental agreement provision, or this chapter which is found by any court of competent having jurisdiction thereof to have been an act that which endangered the life, health, safety, or property of the park residents or employees or the peaceful enjoyment of the mobile home park by its residents, the mobile home park owner may terminate the rental agreement, and the mobile home owner, tenant, or occupant must vacate the premises within will have 7 days after from the date that the notice to vacate is delivered to vacate the premises.

2. For a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner, tenant, or occupant written notice, within 30 days after of the first violation, which notice specified the actions of the mobile home owner, tenant, or occupant that which caused the violation and gave the mobile home owner, tenant, or occupant 7 days to correct the noncompliance. The mobile home owner, tenant, or occupant must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. A second violation of a properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months of the first violation is unequivocally a ground for eviction, and it is not a defense to any eviction proceeding that a violation has been cured after the second violation. Violation of a rule or regulation, rental agreement provision, or this chapter more than after the passage of 1 year after from the first violation of the same rule or regulation, rental agreement provision, or this chapter does not constitute a ground for eviction under this section. No properly promulgated rule or regulation may be arbitrarily applied and used as a ground for eviction.

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners’ association formed and operating under ss.723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the poce and under the terms and conditions set forth in the written notice.

a. The notice shall be delivered to the officers of the homeowners’ association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners’ association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners’ association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners’ association except as provided in sub-subparagraph b.

b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners’ association, the homeowners’ association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners’ association for the sale of the mobile home park to the homeowners’ association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants provided all tenants affected are given at least 6 months’ notice of the eviction due to the projected change in of use and of their need to secure other accommodations. Within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. The division must provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

a. The notice of eviction due to a change in use of the land must shall include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLOIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(e) Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule. If a purchaser or prospective tenant of a mobile home situated in the mobile home park occupies the mobile home before such approval is granted, the mobile home owner or mobile home tenant must vacate the premises within shall have 7 days after from the date the notice of the failure to be approved for tenancy is delivered to vacate the premises.

(2) In the event of eviction for a change in of use, homeowners must object to the change in use by petitioning for administrative or judicial remedies within 90 days after of the date of the notice or they will be barred from taking any subsequent action to contest the change in use. This subsection does provision shall not be construed to prevent any homeowner from objecting to a zoning change at any time.

(3) A mobile home park owner applying for the removal of a mobile home owner, tenant, or occupant or a mobile home, shall file, in the county court in the county where the mobile home lot is situated, a complaint describing the lot and stating the facts that authorize the removal of the mobile home owner, tenant or occupant or the mobile home. The park owner is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(4) Except for the notice to the officers of the homeowners’ association under subparagraph (1)(d)1.,Any notice required by this section must be in writing, and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

(5) A park owner who accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at the final hearing.

## 723.0611 Florida Mobile Home Relocation Corporation. ——

(1) (a) There is created the Florida Mobile Home Relocation Corporation. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to serve for staggered 3-year terms.

(b) A member of the board of directors shall be removed from the board by the Secretary of Business and Professional Regulation, with or without cause, immediately after the written request for removal from the association in paragraph (a) that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the secretary must immediately fill the vacancy created by the removal. The removal process may not occur more than once in a calendar year.

(2) (a) The board of directors may employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the corporation and to perform other necessary and proper functions not prohibited by law.

(b) Members of the board of directors may be reimbursed from moneys of the corporation for actual and necessary expenses incurred by them as members but may not otherwise be compensated for their services.

(c) The corporation shall, for purposes of s. 768.28, be considered an agency of the state. Agents or employees of the corporation, members of the board of directors of the corporation, or representatives of the Division of Florida Condominiums, Timeshares, and Mobile Homes shall be considered officers, employees, or agents of the state, and actions against them and the corporation shall be governed by s. 768.28.

(d) Meetings of the board of directors are subject to the provisions of s. 286.011.

(e) Any person who receives compensation from the corporation or the park owner pursuant to ss. 723.061-723.0612 shall not have a cause of action against the corporation or the park owner for any claim arising under the rights, duties, and obligations of the corporation or park owner in ss. 723.061-723.0612.

(3) The board of directors shall:

(a) Adopt a plan of operation and articles, bylaws, and operating rules pursuant to the provisions of ss. 120.536 and 120.54 to administer the provisions of this section and ss. 723.06115,723.06116, and 723.0612.

(b) establish procedures under which applicants for payments from the corporation may have grievances reviewed by an impartial body and reported to the board of directors.

(4) The corporation may:

(a) Sue or be sued.

(b) Borrow from private finance sources in order to meet the demands of the relocation program established in s. 723.0612.

## 723.06115 Florida Mobile Home Relocation Trust Fund. ——

(1) The Florida Mobile Home Relocation Trust Fund is established within the Department of Business and Professional Regulation. The trust fund is to be used to fund the administration and operations of the Florida Mobile Home Relocation Corporation. All interest earned from the investment or deposit of moneys in the trust fund shall be deposited in the trust fund. The trust fund shall be funded from moneys collected by the corporation from mobile home park owners under s. 723.06116, the surcharge collected by the department under s. 723.007(2), the surcharge collected by the Department of Highway Safety and Motor Vehicles, and from other appropriated funds.

(2) Moneys in the Florida Mobile Home Relocation Trust Fund may be expended only:

(a) To pay the administration costs of the corporation; and

(b) To carry out the purposes and objectives of the Florida Mobile Home Relocation Corporation by making payments to mobile home owners under the relocation program.

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation in accordance with the following:

(a) Before the beginning of each fiscal year, the corporation shall submit its annual operating budget, as approved by the corporation board, for the fiscal year and set forth that amount to the department in writing. One fourth of the operating budget shall be transferred to the corporation each quarter. The department shall make the first one-fourth quarter transfer on the first business day of the fiscal year and make the remaining one-fourth quarter transfers before the second business day of the second, third, and fourth quarters. The corporation board may approve changes to the operational budget for a fiscal year by providing written notification of such changes to the department. The written notification must indicate the changes to the operational budget and the conditions that were unforeseen at the time the corporation developed the operational budget and why the changes are essential in order to continue operation of the corporation.

(b) The corporation shall periodically submit requests to the department for the transfer of funds to the corporation needed to make payments to mobile home owners under the relocation program. Requests must include documentation indicating the amount of funds needed, the name and location of the mobile home park, the number of approved applications for moving expenses or abandonment allowance, and summary information specifying the number and type, single-section or multisection, of homes moved or abandoned. The department shall process requests that include such documentation, subject to the availability of sufficient funds within the trust fund, within 5 business days after receipt of the request. Transfer requests may be submitted electronically.

(c) Funds transferred from the trust fund to the corporation shall be transferred electronically and shall be transferred to and maintained in a qualified public depository as defined in s. 280.02 which is specified by the corporation.

(4) Other than the requirements specified under this section, neither the corporation nor the department are required to take any other action as a prerequisite to accomplishing the provisions of this section.

(5) This section does not preclude department inspection of corporation records 5 business days after receipt of written notice.

## 723.06116 Payments to the Florida Mobile Home Relocation Corporation. ——

(1) If a mobile home owner is required to move due to a change in use of the land comprising a mobile home park as set forth in s. 723.061 (1) (d), the mobile home park owner shall, upon such change in use, pay to the Florida Mobile Home Relocation Corporation for deposit in the Florida Mobile Home Relocation Trust Fund $2,750 for each single-section mobile home and $3,750 for each multisection mobile home for which a mobile home owner has made application for payment of moving expenses. The mobile home park owner shall make the payments required by this section and by s. 723.0612(7) to the corporation within 30 days after receipt from the corporation of the invoice for payment. Failure to make such payment within the required time period shall result in a late fee being imposed.

(a) If payment is not submitted within 30 days after receipt of the invoice, a 10-percent late fee shall be assessed.

(b) If payment is not submitted within 60 days after receipt of the invoice, a 15-percent late fee shall be assessed.

(c) If a payment is not submitted within 60 days after receipt of the invoice, a 20-percent late fee shall be assessed.

(d) Any payment received 120 days or more after receipt of the invoice shall include a 25-percent late fee.

(2) A mobile home park owner is not required to make the payment prescribed in subsection (1), nor is the mobile home owner entitled to compensation under s. 723.0612(1), when:

(a) The mobile home park owner moves a mobile home owner to another space in the mobile home park or to another mobile home park at the park owner’s expense;

(b) A mobile home owner is vacating the premises and has informed the mobile home park owner or manager before the change in use notice has been given; or

(c) A mobile home owner abandons the mobile home as set forth in s. 723.0612 (7).

(d) The mobile home owner has a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in use of the mobile home park given pursuant to s. 723.061(1)(d).

(3) This section and s.723.0612(7) are enforceable by the corporation by action in a court of appropriate jurisdiction. There is hereby appropriated to the Florida Mobile Home Relocation Trust Fund the sum of $500,000 of nonrecurring revenues from the General Revenue fund.

(4) In any action brought by the corporation to collect payments assessed under this chapter, the corporation may file and maintain such action in Leon County. If the corporation is a party in any other action, venue for such action shall be in Leon County.

## 723.0612 Change in use; relocation expenses; payments by park owner. ——

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061 (1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Florida Mobile Home Relocation Corporation of:

(a) The amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or

(b) The amount of $3,000 for a single-section mobile home or $6,000 for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(2) A mobile home owner shall not be entitled to compensation under subsection (1) when:

(a) The park owner moves a mobile home owner to another space in the mobile home park or to another mobile home park at the park owner’s expense;

(b) A mobile home owner is vacating the premises and has informed the park owner or manager before notice of the change in use has been given; or

(c) A mobile home owner abandons the mobile home as set forth in subsection (7); or

(d) The mobile home owner has a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in use of the mobile home park given pursuant to s. 723.061(1)(d).

(3) Except as provided in subsection (7), in order to obtain payment from the Florida Mobile Home Relocation Corporation, the mobile home owner shall submit to the corporation, with a copy to the park owner, and application for payment which includes:

(a) A copy of the notice of eviction due to change in use; and

(b) A contract with a moving or towing contractor for the moving expenses for the mobile home.

(4) The Florida Mobile Home Relocation Corporation must approve payment within 45 days after receipt of the information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the corporation shall issue a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the corporation following completion of the relocation and upon approval of the relocation by the mobile home owner.

(5) Actions of the Florida Mobile Home Relocation Corporation under this section are not subject to the provisions of chapter 120 but are reviewable only by writ of certiorari in the circuit court in the county in which the claimant resides in the manner and within the time provided by the Florida rules of Appellate Procedure.

(6) This section does not apply to any proceeding in eminent domain under chapter 73 or chapter 74.

(7) In Lieu of collecting payment from the Florida Mobile Home Relocation Corporation as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $1,375 for a single section and $2,750 for a multi-section from the corporation as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses this option, the park owner shall make payment to the corporation in an amount equal to the amount the mobile home owner is entitled to under this subsection. The mobile home owner’s application for funds under this subsection shall require the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees to make payment to the corporation in the amount provided to the home owner under this subsection. However, in the event that the required documents are not submitted with the application, the corporation may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

(8) The Florida Mobile Home Relocation Corporation shall not be liable to any person for recovery if funds are insufficient to pay the amounts claimed. In any such event, the corporation shall keep a record of the time and date of its approval of payment to a claimant. If sufficient funds become available, the corporation shall pay the claimant whose unpaid claim is the earliest by time and date of approval.

(9) Any person whose application for funding pursuant to subsection (1) or subsection (7) is approved for payment by the corporation shall be barred from asserting any claim or cause of action under this chapter directly relating to or arising out of the change in use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest. No application for funding pursuant to subsection (1) or subsection (7) shall be approved by the corporation if the applicant has filed a claim or cause of action, is actively pursuing a claim or cause of action, has settled a claim or cause of action, or has a judgment against the corporation, the park owner, or the park owner's successors in interest under this chapter directly relating to or arising out of the change in use of the mobile home park, unless such claim or cause of action is dismissed with prejudice.

(10) It is unlawful for any person or his or her agent to file any notice, statement, or other document required under this section which is false or contains any material misstatement of fact. Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(11) In an action to enforce the provisions of this section and ss. 723.0611, 723.06115, and 723.06116, the prevailing party is entitled to reasonable attorney fees and costs.

(12) An application to the corporation for compensation under subsection (1) or subsection (7) must be received within 1 year after the expiration of the eviction period as established in the notice required under s.723.061(1)(d). If the applicant files a claim or cause of action that disqualifies the applicant under subsection (9) and the claim is subsequently dismissed, the application must be received within 6 months following filing of the dismissal with prejudice as required under subsection (9). However, such an applicant must apply within 2 years after the expiration of the eviction period as established in the notice required under s.723.061(1)(d). For the 2003-2004 fiscal year, the sum of $500,000 is appropriated from the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation.

## 723.0615 Retaliatory conduct.——

(1) It is unlawful for a mobile home park owner to discriminatorily increase a home owner's rent or discriminatorily decrease services to a home owner, or to bring or threaten to bring an action for possession or other civil action, primarily because the park owner is retaliating against the home owner. In order for the home owner to raise the defense of retaliatory conduct, the home owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which the park owner may not retaliate include, but are not limited to, situations where:

(a) The home owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the mobile home park;

(b) The home owner has organized, encouraged, or participated in a homeowners' organization; or

(c) The home owner has complained to the park owner for failure to comply with s. 723.022.

(2) Evidence of retaliatory conduct may be raised by the home owner as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the park owner proves that the eviction is for good cause. Examples of such good cause include, but are not limited to, good faith actions for nonpayment of the lot rental amount, violation of the rental agreement or of park rules, or violation of the terms of this chapter.

## 723.062 Removal of mobile home owner; process.——

(1) In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff, describing the lot or premises and commanding the sheriff to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 10 days from the date judgment is granted.

(2) At the time the sheriff executes the writ of possession, the landlord or the landlord's agent may remove any personal property, including the mobile home, found on the premises to or near the property line or, in the case of the mobile home, into storage. If requested by the landlord, the sheriff shall stand by to keep the peace while the landlord removes personal property. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord nor his or her agent shall be responsible to the tenant or any other party for loss, destruction, or damage to the property after it has been removed.

## 723.063 Defenses to action for rent or possession; procedure.——

(1) In any action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof, the mobile home owner may defend upon the ground of a material noncompliance with any portion of this chapter or may raise any other defense, whether legal or equitable,

which he or she may have. The defense of material noncompliance may be raised by the mobile home owner only if 7 days have elapsed after he or she has notified the park owner in writing of his or her intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with portions of this chapter, specifying in reasonable detail the provisions in default. A material noncompliance with this chapter by the park owner is a complete defense to an action for possession based upon nonpayment of rent, or a portion thereof, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the lot during the period of noncompliance with any portion of this chapter. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In any action by the park owner or a mobile home owner brought under subsection (1), the mobile home owner shall pay into the registry of the court that portion of the accrued rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court shall notify the mobile home owner of such requirement. The failure of the mobile home owner to pay the rent, or portion thereof, into the registry of the court as required herein constitutes an absolute waiver of the mobile home owner's defenses other than payment, and the park owner is entitled to an immediate default.

(3) When the mobile home owner has deposited funds into the registry of the court in accordance with the provisions of this section and the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the park owner may apply to the court for disbursement of all or part of the funds or for prompt final hearing, whereupon the court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.

## 723.068 Attorney fees.——

Except as provided in s. 723.037, in any proceeding between private parties to enforce provisions of this chapter, the prevailing party is entitled to a reasonable attorney's fee.

## 723.071 Sale of mobile home parks.——

(1) (a) If a mobile home park owner offers a mobile home park for sale, he shall notify the officers of the homeowners' association created pursuant to ss. 723.075-723.079 of the offer, stating the price and the terms and conditions of sale.

(b) The mobile home owners, by and through the association defined in s. 723.075, shall have the right to purchase the park, provided the home owners meet the price and terms and conditions of the mobile home park owner by executing a contract with the park owner within 45 days, unless agreed to otherwise, from the date of mailing of the notice and provided they have complied with ss. 723.075—723.079. If a contract between the park owner and the association is not executed within such 45—day period, then, unless the park owner thereafter elects to offer the park at a price lower than the price specified in her or his notice to the officers of the homeowners' association, the park owner has no further obligations under this subsection, and her or his only obligation shall be as set forth in subsection (2).

(c) If the park owner thereafter elects to offer the park at a price lower than the price specified in her or his notice to the home owners, the home owners, by and through the association, will have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

(2) If a mobile home park owner receives a bona fide offer to purchase the park that she or he intends to consider or make a counteroffer to, the park owner's only obligation shall be to notify the officers of the homeowners' association that she or he has received an offer and disclose the price and material terms and conditions upon which she or he would consider selling the park and consider any offer made by the home owners, provided the home owners have complied with ss. 723.075—723.079. The park owner shall be under no obligation to sell to the home owners or to interrupt or delay other negotiations and shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

(3) (a) As used in subsections (1) and (2), the term "notify" means the placing of a notice in the United States mail addressed to the officers of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection (1), the term "offer" means any solicitation by the park owner to the general public.

(4) This section does not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate.

(b) Any transfer by gift, devise, or operation of law.

(c) Any transfer by a corporation to an affiliate. As used herein, the term "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a mobile home park incidental to the financing of such mobile home park.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a mobile home park or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a mobile home park.

(h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot.

( i) The purchase of a mobile home park by a governmental entity under its powers of eminent domain.

## 723.072 Affidavit of compliance with statutory requirements.——

(1) A park owner may at any time record, in the official records of the county where a mobile home park is situated, an affidavit in which the park owner certifies that:

(a) With reference to an offer by him or her for the sale of such park, he or she has complied with the provisions of s. 723.071(1);

(b) With reference to an offer received by him or her for the purchase of such park, or with reference to a counteroffer which he or she intends to make, or has made, for the sale of such park, he or she has complied with the provisions of s. 723.071(2);

(c) Notwithstanding his or her compliance with the provisions of either subsection (1) or subsection (2) of s. 723.071, no contract has been executed for the sale of such park between himself or herself and the park homeowners' association;

(d) The provisions of subsections (1) and (2) of s. 723.071 are inapplicable to a particular sale or transfer of such park by him or her, and compliance with such subsections is not required; or

(e) A particular sale or transfer of such park is exempted from the provisions of this section and s. 723.071.

Any party acquiring an interest in a mobile home park, and any and all title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner's compliance with the provisions of s. 723.071.

(2) It is the purpose and intention of this section to preserve the marketability of title to mobile home parks, and, accordingly, the provisions of this section shall be liberally construed in order that all persons may rely on the record title to mobile home parks.

## 723.073 Conveyance by the association.——

(1) In the event that an association acquires a mobile home park and intends to reconvey a portion or portions of the property acquired to members of the association, the association shall record copies of its articles and bylaws and any additional covenants, restrictions, or declarations of servitude affecting the property with the clerk of the circuit court prior to the conveyance of any portion of the property to an individual member of the association. To create a mobile home cooperative after acquisition of the property, the association shall record the cooperative documents, as required by chapter 719, in the county where the property is located. The effective date of the cooperative shall be the date of the recording.

(2) An association that acquires a mobile home park pursuant to s. 723.071 is exempt from s. 719.1035 and the requirements of part VI of chapter 718 and part VI of chapter 719.

## 723.074 Sale of facilities serving a mobile home subdivision.——

The owner of recreational facilities or other property exclusively serving a mobile home subdivision shall not sell such recreational facilities or other property unless she or he first gives the right to purchase such recreational facilities or other property to the owners of lots within the mobile home subdivision, in the manner provided for in s. 723.071, provided the owners of lots within the subdivision have created a homeowners' association similar to that required by s. 723.075. A mobile home subdivision in which no more than 30 percent of the total lots are leased will not be deemed to be a mobile home park, provided the mobile home owner is granted

an option to purchase the lot when the lease is entered into and provided the purchase price of the lot is included in the original lease agreement.

## 723.075 Homeowners' associations.——

(1) In order to exercise the rights of a homeowners’ association as provided in this chapter, the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078, and 723.079, which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members or shareholders. Upon incorporation of the association, all consenting mobile home owners in the park may become members or shareholders. The term “member” or “shareholder” means a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and policies of the incorporated homeowners’ association. The association may not have a member or shareholder who is not a bona fide owner of a mobile home located in the park. Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of all the mobile home owners in all matters relating to this chapter, regardless of whether the homeowner is a member of the association.

(2) It is the intent of the Legislature that any homeowners' association properly created pursuant to chapter 715 prior to the effective date of this act be deemed an association created pursuant to the provisions of this section and have all rights and powers granted under this section and ss. 723.077 and 723.079. Any inconsistency in the provisions of the charter of such previously created homeowners' association shall be deemed amended to conform herewith.

(3) Notwithstanding subsection (1), if a portion of the park contains con­crete block homes occupying lots under 99-year leases, those homeowners may be part of the association and may serve on the board of directors of the association based on the percentage of lots containing concrete block homes to the total number of mobile home lots in the park.

## 723.0751 Mobile home subdivision homeowners’ association. ——

(1) In the event that no homeowners’ association has been created pursuant to ss. 720.301-720.312 to operate a mobile home subdivision, the owners of lots in such mobile home subdivision shall be authorized to create a mobile home subdivision homeowners’ association in the manner prescribed in ss. 723.075, 723.076 and 723.078 which shall have the powers and duties, to the extent applicable, set forth in ss. 723.002(2) and 723.074.

(2) Rights granted to the owners of lots in a mobile home subdivision in ss. 723.002(2) and 723.074 may be exercised through an association created or authorized pursuant to this section for the owners of lots who are members of the mobile home subdivision homeowners’ association.

(3) In the event that the owners of lots in a mobile home subdivision share common areas, recreational facilities, roads, and other amenities with the owners of mobile homes in a mobile home park and the mobile home owners have created a mobile homeowners’ association pursuant to ss. 723.075-723.079, said mobile homeowners’ association shall be the authorized representative of owners of lots in said mobile home subdivision provided:

(a) The members of the mobile homeowners’ association have, by majority vote, authorized the inclusion of subdivision lot owners in the mobile home park homeowners’ association; and

(b) The owners of lots in the mobile home subdivision are entitled to vote only on matters that effect their rights contained in ss. 723.002(2) and 723.074.

## 723.076 Incorporation; notification of park owner.——

(1) Upon receipt of its certificate of incorporation, the homeowners' association shall notify the park owner in writing of such incorporation and shall advise the park owner of the names and addresses of the officers of the homeowners' association by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested. Thereafter, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of any change of names and addresses of its president or registered agent. Upon election or appointment of new officers or board members, the homeowners’ association shall notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of the new officers or board members.

(2) Upon written request by the homeowners' association, the park owner shall notify the homeowners' association by certified mail, return receipt requested, of the name and address of the park owner, the park owner's agent for service of process, and the legal description of the park. Thereafter, in the event of a change in the name or address of the park owner or the park owner's agent for service of process, the park owner shall notify in writing the president or registered agent of the homeowners' association of such change by certified mail, return receipt requested.

(3) The homeowners' association shall file a notice of its right to purchase the mobile home park as set forth in s. 723.071. The notice shall contain the name of the association, the name of the park owner, and the address or legal description of the park. The notice shall be recorded with the clerk of the circuit court in the county where the mobile home park is located. Within 10 days of the recording, the homeowners' association shall provide a copy of the recorded notice to the park owner at the address provided by the park owner by certified mail, return receipt requested.

## 723.077 Articles of incorporation.——

The articles of incorporation of a homeowners' association shall provide:

(1) That the association has the power to negotiate for, acquire, and operate the mobile home park on behalf of the mobile home owners.

(2) For the conversion of the mobile home park once acquired to a condominium, a cooperative, or a subdivision form of ownership, or another type of ownership.

Upon acquisition of the property, the association, by action of its board of directors, shall be the entity that creates a condominium, cooperative, or subdivision or offers condominium, cooperative, or subdivision units for sale or lease in the ordinary course of business or, if the homeowners choose a different form of ownership, the entity that owns the record interest in the property and that is responsible for the operation of property.

## 723.078 Bylaws of homeowners' associations.——

(1) The directors of the association and the operation shall be governed by the bylaws.

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions:

(a) Administration.—The form of administration of the association shall be described, providing for the titles of the officers and for a board of directors and specifying the powers, duties,manner of selection and removal, and compensation, if any, of officers and board members. Unless otherwise provided in the bylaws, the board of directors shall be composed of five members. The board of directors shall elect a president, secretary, and treasurer who shall perform the duties of those offices customarily performed by officers of corporations, and these officers shall serve without compensation and at the pleasure of the board of directors. The board of directors may elect and designate other officers and grant them those duties it deems appropriate.

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. Decisions shall be made by a majority of members represented at a meeting at which a quorum is present.

2. a. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members. A proxy, limited or general, may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person. If a mobile home or subdivision lot is owned jointly, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. Any number greater than 50 percent of the total number of votes constitutes a majority. Notwithstanding this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

b. Elections shall be decided by a plurality of the ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A member may not allow any other person to cast his or her ballot, and any ballots improperly cast are invalid. An election is not required unless there are more candidates nominated than vacancies that exist on the board.

c. Each member or other eligible person who desires to be a candidate for the board of directors shall appear on the ballot in alphabetical order by surname. A ballot may not indicate if any of the candidates are incumbent on the board. All ballots must be uniform in appearance. Write-in candidates and more than one vote per candidate per ballot are not allowed. A ballot may not provide a space for the signature of, or any other means of identifying, a voter. If a ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws.

d. An impartial committee shall be responsible for overseeing the election process and complying with all ballot requirements. For purposes of this section, the term “impartial committee” means a committee whose members do not include any of the following people or their spouses:

(I) Current board members.

(II) Current association officers.

(III) Candidates for the association or board.

e. The association bylaws shall provide a method for determining the winner of an election in which two or more candidates for the same position receive the same number of votes.

f. The division shall adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining the secrecy of ballots.

3. A proxy is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.

4. A member of the board of directors or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

(c) Board of directors’ and committee meetings.—

1. Meetings of the board of directors and meetings of its committees at which a quorum is present shall be open to all members. Notwithstanding any other provision of law, the requirement that board meetings and committee meetings be open to the members does not apply to meetings between the park owner and the board of directors or any of the board’s committees, board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association’s attorney, with respect to potential or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice, and when the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of all meetings open to members shall be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which dues are to be considered for any reason shall specifically contain a statement that dues will be considered and the nature of such dues.

2. A board or committee member’s participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting.

3. Members of the board of directors may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

4. The right to attend meetings of the board of directors and its committees includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt reasonable written rules governing the frequency, duration, and manner of members’ statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners’ committee and the park owner. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting.

5. Except as provided in s. 723.078(2)(i), a vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum; by the sole remaining director; if the vacancy is not so filled or if no director remains, by the members; or, on the application of any person, by the circuit court of the county in which the registered office of the corporation is located.

6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

7. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

8. a. The officers and directors of the association have a fiduciary relationship to the members.

b. A director and committee member shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

9. In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

a. One or more officers or employees of the corporation who the director reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons’ professional or expert competence; or

c. A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

10. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subparagraph 9. unwarranted.

11. A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

(d) Member meetings.—

1. Members shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of directors shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. All nominations from the floor must be made at a duly noticed meeting of the members held at least 30 days before the annual meeting. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the park property of a notice of the meeting at least 14 days prior to the meeting. The right to receive written notice of membership meetings may be waived in writing by a member. Unless waived, the notice of the annual meeting shall be mailed, hand delivered, or electronically transmitted to each member, and shall constitute notice. Unless otherwise stated in the bylaws,an officer of the association shall provide an affidavit affirming that the notices were mailed, hand delivered, or provided by electronic transmission in accordance with this section to each member at the address last furnished to the corporation. These meeting requirements do not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(e) Minutes of meetings.—

1. Notwithstanding any other provision of law, the minutes of board or committee meetings that are closed to members are privileged and confidential and are not available for inspection or photocopying.

2. Minutes of all meetings of members of an association and meetings open to members of, the board of directors, and a committee of the board must be maintained in written form and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

3. All approved minutes of open meetings of members, committees, and the board of directors shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes within this state for at least 5 years.

(f) Manner of sharing assessments.— The share or percentage of, and manner of sharing, assessments and expenses for each member shall be stated.

(g) Annual budget.— If the bylaws provide for adoption of an annual budget by the members, the board of directors shall mail a meeting notice and copies of the proposed annual budget of expenses to the members at least n 30 days before the meeting at which the budget will be considered. If the bylaws provide that the budget may be adopted by the board of directors, the members shall be given written notice of the time and place at which the meeting of the board of directors to consider the budget will be held. The meeting shall be open to the members. If the bylaws do not provide for adoption of an annual budget, this paragraph shall not apply.

(h) Amendment of articles of incorporation and bylaws.—

1. The method by which the articles of incorporation and bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present. No bylaw shall be revised or amended by reference to its title or number only.

2. Notwithstanding any other provision of this section, if an amendment to the articles of incorporation or the bylaws is required by any action of any federal, state, or local governmental authority or agency, or any law, ordinance, or rule thereof, the board of directors may, by a majority vote of the board, at a duly noticed meeting of the board, amend the articles of incorporation or bylaws without a vote of the membership.

(i) Recall of board members.—Any member of the board of directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all members by a vote at a meeting, the recall is effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed under subparagraph 3.
2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.
3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member’s possession within 5 full business days after the effective date of the recall.
4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the members’ recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.
5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member’s representative may file a petition pursuant to s. 723.1255 challenging the board’s failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-businessday period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.
6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any other provision of this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.
7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member’s representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(3) The bylaws may provide the following:

(a) A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the park property.

(b) Restrictions on, and requirements respecting, the use and maintenance of mobile homes located within the park, and the use of the park property, which restrictions and requirements are not inconsistent with the articles of incorporation.

(c) Other provisions not inconsistent with this chapter or with other documents governing the park property or mobile homes located therein.

(d) The board of directors may, in any event, propose a budget to the members at a meeting of members or in writing, and, if the budget or proposed budget is approved by the members at the meeting or by a majority of their whole number in writing, that budget shall be adopted.

(e) The manner of collecting from the members their shares of the expenses for maintenance of the park property shall be stated. Assessments shall be made against members not less frequently than quarterly, in amounts no less than are required to provide funds in advance for payments of all of the anticipated current operating expenses and for all of the unpaid operating expense previously incurred.

(4) No amendment may change the proportion or percentage by which members share in the assessments and expenses as initially established unless all the members affected by such change approve the amendment.

(5) Upon purchase of the mobile home park, the association organized under this chapter may convert to a condominium, cooperative, or subdivision. The directors shall have the authority to amend and restate the articles of incorporation and bylaws in order to comply with the requirements of chapter 718, chapter 719, or other applicable sections of the Florida Statutes.

(6) Notwithstanding the provisions of s. 723.075(1), upon purchase of the park by the association, and conversion of the association to a condominium, cooperative, or subdivision, the mobile home owners who were members of the association prior to the conversion and who no longer meet the requirements for membership, as established by the amended or restated articles of incorporation and bylaws, shall no longer be members of the converted association. Mobile home owners, as defined in this chapter, who no longer are eligible for membership in the converted association may form an association pursuant to s. 723.075.

## 723.0781 Board member training programs.—

(1) Within 90 days after being elected or appointed to the board, a newly elected or appointed director shall certify by an affidavit in writing to the secretary of the association that he or she has read the association’s current articles of incorporation, bylaws, and the mobile home park’s prospectus, rental agreement, rules, regulations, and written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members.

(2) In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum approved by the division within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption.

(3) A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this section. The board may temporarily fill the vacancy during the period of suspension.

(4) The secretary of the association shall retain a director’s written certification or educational certificate for inspection by the members for 5 years after the director’s election or the duration of the director’s uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

(5) This section becomes effective on October 1, 2016. Any member of the board of directors of a homeowners’ association not in compliance with the requirements of this section may not be considered in violation of this section until after October 1, 2017.

## 723.079 Powers and duties of homeowners' association.——

(1) An association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.

(2) The powers and duties of an association include those set forth in this section and ss. 723.075 and 723.077 and those set forth in the articles of incorporation and bylaws and any recorded declarations or restrictions encumbering the park property, if not inconsistent with this chapter.

(3) An association has the power to make, levy, and collect assessments and to lease, maintain, repair, and replace the common areas upon purchase of the mobile home park.

(4) The association shall maintain the following items, when applicable, which constitute the official records of the association:

(a) A copy of the association’s articles of incorporation and each amendment to the articles of incorporation.

(b) A copy of the bylaws of the association and each amendment to the bylaws.

(c) A copy of the written rules or policies of the association and each amendment to the written rules or policies.

(d) The approved minutes of all meetings of the members,of an association and meetings open for members of the board of directors, and committees of the board, which minutes must be retained within this state for at least 5 years.

(e) A current roster of all members and their mailing addresses and lot identifications. The association shall also maintain the e-mail addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by members to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the email address or the number for receiving electronic transmission of notices.

(f) All of the association’s insurance policies or copies thereof, which must be retained within this state for at least 5 years after the expiration date of the policy.

(g) A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained within this state for at least 5 years after the expiration date of the contract or agreement.

(h) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained within this state for at least 5 years. The financial and accounting records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay dues or assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

(i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association must be retained within this state for at least 5 years or at least 5 years after the expiration date, as applicable..

(5) The official records shall be made available to a member for inspection or photocopying within 20 business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested. The requirements of this subsection are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide a member with copies on request during the inspection if the entire request is no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association’s providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 20 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to damages for the association’s willful failure to comply with this subsection in the amount of $10 per calendar day up to 10 days, not to exceed $100. The calculation for damages begins on the 21st business day after receipt of the written request, submitted by certified mail, return receipt requested.

(c) A dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255 and procedural rules adopted by the division.

(d) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member’s right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association’s photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or home owners:

1. A record protected by the lawyer-client privilege as described in s. 90.502 and a record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney’s express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. E-mail addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a home owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person’s name, lot designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to home owners a directory containing the name, park address, and telephone number of each home owner. However, a home owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by a home owner and not requested by the association.

3. A electronic security measure that is used by the association to safeguard data, including passwords.

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

(6) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election or removal.

(7) An association has the power to purchase lots in the park and to acquire, hold, lease, mortgage, and convey them.

(8) An association shall use its best efforts to obtain and maintain adequate insurance to protect the association and the park property upon purchase of the mobile home park. A copy of each policy of insurance in effect shall be made available for inspection by owners at reasonable times.

(9) An association has the authority, without the joinder of any home owner, to modify, move, or create any easement for ingress and egress or for the purpose of utilities if the easement constitutes part of or crosses the park property upon purchase of the mobile home park. This subsection does not authorize the association to modify or move any easement created in whole or in part for the use or benefit of anyone other than the members, or crossing the property of anyone other than the members, without his or her consent or approval as required by law or the instrument creating the easement. Nothing in this subsection affects the rights of ingress or egress of any member of the association.

(10) Any mobile home owners' association or group of residents of a mobile home park as defined in this chapter may conduct bingo games as provided in s. 849.0931.

(11) An association organized under this chapter may offer subscriptions, for the purpose of raising the necessary funds to purchase, acquire, and operate the mobile home park, to its members or other owners of mobile homes within the park. Subscription funds collected for the purpose of purchasing the park shall be placed in an association or other escrow account prior to purchase, which funds shall be held according to the terms of the subscription agreement. The directors shall maintain accounting records according to generally accepted accounting practices and shall, upon written request by a subscriber, furnish an accounting of the subscription fund escrow account within 60 days of the purchase of the park or the ending date as provided in the subscription agreement, whichever occurs first.

(12) For a period of 180 days after the date of a purchase of a mobile home park by the association, the association shall not be required to comply with the provisions of part V of chapter 718 part V of chapter 719, or part II of chapter 720, as to mobile home owners or persons who have executed contracts to purchase mobile homes in the park.

(13) The provisions of subsections (4) and (7) shall not apply to records relating to subscription funds collected pursuant to subsection (11)

## 723.0791 Mobile home cooperative homeowners' associations; elections.——

The provisions of s. 719.106(1)(b) notwithstanding, the election of board members in a mobile home cooperative homeowners' association may be carried out in the manner provided for in the bylaws of the association. A mobile home cooperative is a residential cooperative consisting of real property to which 10 or more mobile homes are located or are affixed.

## 723.081 Notice of application for change in zoning.——

The mobile home park owner shall notify in writing each mobile home owner or, if a homeowners' association has been established, the directors of the association, of any application for a change in zoning of the park within 5 days after the filing for such zoning change with the zoning authority.

## 723.083 Governmental action affecting removal of mobile home owners.——

No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

## 723.084 Storage charges on mobile homes.——

(1) As provided by this section, any lien or charge against a mobile home for storage upon the real property on which the mobile home is or has been located is subordinate to the rights of a lienholder for unpaid purchase price or first lien, which is recorded on the title of the mobile home, and the assignee of such lienholder if not recorded on the title. However, storage charges, as provided in this section, may be collected by the real property owner from the lienholder and the assignee of such lienholder by an action at law as authorized by this act. The term "lienholder" as used in this act applies only to the lienholder for unpaid purchase price or first lien who has recorded said lien on the title of the mobile home.

(2) The real property owner shall be entitled to collect storage charges accruing from 5 days after the lienholder receives written notice of either an eviction proceeding instituted by the real property owner against the homeowner, or that the mobile home is abandoned or voluntarily surrendered by the homeowner. The notice shall state that an action for eviction has been filed against the homeowner, the amount of the daily storage charges calculated pursuant to this section, and the date upon which the homeowner is required to make regular payments to the property owner.

(3) The lienholder must notify the property owner within 30 days of receipt of the notice pursuant to subsection (2) whether it intends to make payment of the storage charges and, if the lienholder agrees to make payment, to pay the storage charges accruing to that date. Thereafter, the lienholder shall pay storage charges according to the schedule of payments that the homeowner was responsible for paying. In the event that the lienholder does not notify the property owner of its intention to not pay storage charges, the storage charges shall accrue and be due and owing to the property owner. In the event the lienholder notifies the property owner within 30 days of the receipt of the notice that it does not intend to pay the storage charges, the storage charges shall not accrue, but the lienholder shall not be entitled to any of the protections set forth in this act, and shall be subject to any remedies available to the property owner including retention of possession of the mobile home and foreclosure thereon to satisfy the landlord's lien for rent.

(4) In the event that the lienholder files either an action for replevin of the home or forecloses on the lien for unpaid purchase price or first lien, the lienholder is responsible for storage charges accrued from 30 days after the date of filing of the action for replevin or foreclosure.

(5) In the event that the homeowner declares bankruptcy, the lienholder is responsible for storage charges accrued from and after 5 days after the final court action discharging the bankruptcy, or releasing the collateral, whichever occurs first.

(6) The maximum storage charge available to the real property owner is a daily rate equal to one-thirtieth of the amount of the monthly payment last paid by the homeowner, the then current lot rental amount paid by the homeowner, or if no payment has been made, the payment required pursuant to contract between the real property owner and the homeowner. The maximum daily storage charges may be increased over time in accordance with the notice requirements under applicable provisions of Florida law, including, but not limited to, this chapter.

(7) Notice required as set forth in subsection (2) shall be mailed by certified mail, return receipt requested. Notice by certified mail shall be effective on the date of receipt or, if refused, on the date of refusal. All other notices may be by regular mail, and will, for purposes of calculation of time, be considered delivered 5 days after the date postmarked.

(8) For any lien for unpaid purchase price or first lien recorded after April 8, 1992, the lienholder shall notify the property owner of the lien against the mobile home and the address of the lienholder.

(9) It shall be unlawful for the property owner to refuse to allow the lienholder to repossess and move the mobile home for failure to pay any charges which were not noticed in accordance with the requirements of this section. In the event that the real property owner refuses to allow the lienholder to repossess and move the mobile home, then the real property owner shall be liable to the lienholder for each day that the real property owner unlawfully maintains possession of the home, at a daily rate equal to one-thirtieth of the monthly payment last paid by the homeowner to the real property owner, or, if no payment has been made, the payment required pursuant to contract between the real property owner and the homeowner.

## 723.085 Rights of lienholder on mobile homes in rental mobile home parks.—

(1) It shall be unlawful for a mobile home park owner to execute on a writ of possession of a mobile home that is either undergoing foreclosure of a lien for unpaid purchase price or first lien, properly noticed pursuant to this act, or that has been foreclosed on by the lienholder, and the lienholder is the titleholder of the mobile home, so long as the lot rental amount is paid in accordance with s. 723.084(6).

(2) Upon the foreclosure of the lien for unpaid purchase price and sale of the mobile home, the owner of the mobile home must qualify for tenancy in the mobile home park in accordance with the rules and regulations of the mobile home park. The park owner shall comply with the provisions of s. 723.061 in determining whether the homeowner may

qualify as a tenant.

## 723.086 Property and lienholder contracts.——

The property owner and lienholder may enter into any contract providing rights, duties, and obligations different from those set forth in this act, and the terms and conditions of such contract shall control the rights, duties, and obligations of the parties with respect to any action at law brought to enforce the provisions of this act. Any such contract shall control the rights, duties, and obligations of the parties to the extent of any inconsistency with the provisions of this act.

## 723.0861 Attorney fees and costs.——

The prevailing party in any action brought to enforce the provisions of this section shall be entitled to reasonable attorney fees and costs.

## 723.1255 Alternative resolution of recall election, and inspection and photocopying of official records disputes.—

(1) A dispute between a mobile home owner and a homeowners’ association regarding the election and recall of officers or directors under s. 723.078(2)(b) or regarding the inspection and photocopying of official records under s. 723.079(5) must be submitted to mandatory binding arbitration with the division. The arbitration shall be conducted in accordance with this section and the procedural rules adopted by the division.

(2) Each party shall be responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrators shall be divided equally between the parties regardless of the outcome.

(3) The division shall adopt procedural rules to govern mandatory binding arbitration proceedings.

# Discrimination in the Treatment of Persons

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This act shall be known by the popular name the “Dr. Marvin Davies Florida Civil Rights Act.”

# PART I FLORIDA CIVIL RIGHTS ACT

## 760.01 Purposes; construction; title.——

(1) Sections 760.01—760.11 and 509.092 shall be cited as the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

## 760.02 Definitions.——

For the purposes of ss. 760.01—760.11 and 509.092, the term:

(1) "Florida Civil Rights Act of 1992" means ss. 760.01—760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(5) "National origin" includes ancestry.

(6) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(7) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(8) "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(10) "Aggrieved person" means any person who files a complaint with the Human Relations Commission.

(11) “Public accommodations” means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

## 760.021 Enforcement.--

(1) The Attorney General may commence a civil action for damages, injunctive relief, civil penalties not to exceed $10,000 per violation, and such other relief as may be appropriate under the laws of this state if the Attorney General has reasonable cause to believe that any person or group:

(a) Has engaged in a pattern or practice of discrimination as defined by the laws of this state; or

(b) Has been discriminated against as defined by the laws of this state and such discrimination raises an issue of great public interest.

(2) The Attorney General may file an action under this section in the circuit court of the county where the cause of action arises or in the circuit court of the Second Judicial Circuit, in and for Leon County.

(3) In any proceeding under this section, the respondent may request, before any responsive pleading is due, that a hearing be held no earlier than 5 days but no more than 30 days after the filing of the complaint, at which hearing the court shall determine whether the complaint on its face makes a prima facie showing that a pattern or practice of discrimination exists or that, as a result of discrimination, an issue of great public interest exists.

(4) The prevailing party in an action brought under this section is entitled to an award of reasonable attorney fees and costs.

(5) Any damages recovered under this section shall accrue to the injured party.

## 760.03 Commission on Human Relations; staff.——

(1) There is hereby created the Florida Commission on Human Relations, comprised of 12 members appointed by the Governor, subject to confirmation by the Senate. The commission shall select one of its members to serve as chairperson for terms of 2 years.

(2) The members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state; and at least one member of the commission must be 60 years of age or older.

(3) Commissioners shall be appointed for terms of 4 years. A member chosen to fill a vacancy otherwise than by expiration of term shall be appointed for the unexpired term of the member whom such appointee is to succeed. A member of the commission shall be eligible for reappointment. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission.

(4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.

(5) Six members shall constitute a quorum for the conduct of business; however, the commission may establish panels of not less than three of its members to exercise its powers under the Florida Civil Rights Act of 1992, subject to such procedures and limitations as the commission may provide by rule. Notwithstanding this subsection, three appointed members serving on panels shall constitute a quorum for the conduct of official business of the panel.

(6) Each commissioner shall be compensated at the rate of $50 per day for each day of actual attendance to commission duties and shall be entitled to receive per diem and travel expenses as provided by s. 112.061.

(7) The commission shall appoint, and may remove, an executive director who, with the consent of the commission, may employ a deputy, attorneys, investigators, clerks, and such other personnel as may be necessary adequately to perform the functions of the commission, within budgetary limitations.

## 760.04 Commission on Human Relations, assigned to Department of Management Services.—

The commission created by s. 760.03 is assigned to the Department of Management Services. The commission, in the performance of its duties pursuant to the Florida Civil Rights Act of 1992, shall not be subject to control, supervision, or direction by the Department of Management Services.

## 760.05 Functions of the commission.——

The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.

## 760.06 Powers of the commission.——

Within the limitations provided by law, the commission shall have the following powers:

(1) To maintain offices in the State of Florida.

(2) To meet and exercise its powers at any place within the state.

(3) To promote the creation of, and to provide continuing technical assistance to, local commissions on human relations and to cooperate with individuals and state, local, and other agencies, both public and private, including agencies of the Federal Government and of other states.

(4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities.

(5) To receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992.

(6) To issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be delegated by the commission, for investigations or hearings, to a commissioner or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court's order may be punished by the court as contempt. If the court enters an order holding a person in contempt or compelling the person to comply with the commission's order or subpoena, the court shall order the person to pay the commission reasonable expenses, including reasonable attorneys' fees, accrued by the commission in obtaining the order from the court.

(7) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.

(8) To furnish technical assistance requested by persons to facilitate progress in human relations.

(9) To make or arrange for studies appropriate to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and to make the results thereof available to the public.

(10) To become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect the Florida Civil Rights Act of 1992.

(11) To render, at least annually, a comprehensive written report to the Governor and the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of the Florida Civil Rights Act of 1992.

(12) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and govern the proceedings of the commission, in accordance with chapter 120.

(13) To receive complaints and coordinate all activities as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

## 760.065 Florida Civil Rights Hall of Fame.—

(1) It is the intent of the Legislature to recognize and honor those persons, living or dead, who have made significant contributions to this state as leaders in the struggle for equality and justice for all persons.

(2) (a) There is hereby established the Florida Civil Rights Hall of Fame. The Department of Management Services shall set aside an appropriate public area of the Capitol Building for the Florida Civil Rights Hall of Fame and shall consult with the commission regarding the design and theme of such area.

(b) Each person who is selected as a member shall have a designation placed in the Florida Civil Rights Hall of Fame, which designation shall provide information regarding the member’s particular discipline or contribution and any vital information relating to the member.

(3)(a) The commission shall annually accept nominations for persons to be recommended as members of the Florida Civil Rights Hall of Fame. The commission shall recommend up to 10 persons from which the Governor shall select up to three hall-of-fame members.

(b) In making recommendations pursuant to this subsection, the commission shall recommend persons who are 18 years of age or older, who were born in Florida or adopted Florida as their home state and base of operation, and who have made a significant contribution and provided exemplary leadership toward Florida’s progress and achievements in civil rights.

(4) The commission may set specific time periods for acceptance of nominations and the selection of members to coincide with the appropriate activities of the Florida Civil Rights Hall of Fame.

(5) The commission shall be responsible for costs relating to the Florida Civil Rights Hall of Fame, excluding normal costs of operations, repairs, and maintenance of the public area designated for the Florida Civil Rights Hall of Fame, which shall be the responsibility of the Department of Management Services.

## 760.07 Remedies for unlawful discrimination.——

Any violation of any Florida statute that makes unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

## 760.08 discrimination in places of public accommodation.—

All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion.

## 760.10 Unlawful employment practices.——

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, absence of handicap, or marital status.

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01—760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, handicap, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(b) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of ss. 760.01—760.10. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for 2 years after October 1, 1981, whichever occurs first, nor shall this act preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held.

(c) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit persons of a particular age group.

(d) Take or fail to take any action on the basis of marital status if that status is prohibited under its antinepotism policy.

(9) This section shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. This section shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01—760.10.

## 760.11 Administrative and civil remedies; construction.——

(1) Any person aggrieved by a violation of ss. 760.01—760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the person responsible for the violation and describing the violation.

The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a compliant under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

(This act shall take effect July 1, 2015.)

(2) If any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate the complaint, the commission may refer such complaint to such agency for an investigation. Referral of such a complaint by the commission does not constitute agency action within the meaning of s. 120.52(2). If the commission refers a complaint to another agency under this subsection, the commission shall accord substantial weight to any findings and conclusions of any such agency. The referral of a complaint by the commission to a local agency does not divest the commission's jurisdiction over the complaint.

(3) Except as provided in subsection (2), the commission shall investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992. When the commission determines whether or not there is reasonable cause, the commission by registered mail shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section.

(4) If the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(b) Request an administrative hearing under s. 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person under to this act.

(5) In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. The provisions of ss. 768.72 and 768.73 do not apply to this section. The judgment for the total amount of punitive damages awarded under this section to an aggrieved person shall not exceed $100,000. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney fees be interpreted in a manner consistent with federal case law involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury. The commission's determination of reasonable cause is not admissible into evidence in any civil proceeding, including any hearing or trial, except to establish for the court the right to maintain the private right of action. A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission. The commencement of such action shall divest the commission of jurisdiction of the complaint, except that the commission may intervene in the civil action as a matter of right. Notwithstanding the above, the state and its agencies and subdivisions shall not be liable for punitive damages. The total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in s. 768.28(5).

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under s. 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the final order issued by the commission determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the aggrieved person may bring, within 1 year of the date of the final order, a civil action under subsection (5) as if there has been a reasonable cause determination or accept the affirmative relief offered by the commission, but not both.

(8) In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days after the filing of the complaint:

(a) An aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause.

(b) The commission shall promptly notify the aggrieved person of the failure to conciliate or determine whether there is reasonable cause. The notice shall provide the options available to the aggrieved person under subsection (4) and inform the aggrieved person that he or she must file a civil action within 1 year after the date the commission certifies that the notice was mailed.

(c) A civil action brought by an aggrieved person under this section must be commenced within 1 year after the date the commission certifies that the notice was mailed pursuant to paragraph (b).

(9) No liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint with the commission.

(10) A judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(11) If a complaint is within the jurisdiction of the commission, the commission shall simultaneously with its other statutory obligations attempt to eliminate or correct the alleged discrimination by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent civil proceeding, trial, or hearing. The commission may initiate dispute resolution procedures, including voluntary arbitration, by special magistrates or mediators. The commission may adopt rules as to the qualifications of persons who may serve as special magistrates and mediators.

(12) All complaints filed with the commission and all records and documents in the custody of the commission, which relate to and identify a particular person, including, but not limited to, a complainant, employer, employment agency, labor organization, or joint labor-management committee shall be confidential and shall not be disclosed by the commission, except to the parties or in the course of a hearing or proceeding under this section. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.

(13) Final orders of the commission are subject to judicial review pursuant to s. 120.68. The commission's determination of reasonable cause is not final agency action that is subject to judicial review. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay the order of the commission, except as provided in the Rules of Appellate Procedure. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the cost. It is the intent of the Legislature that this provision for attorney fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the order of the court determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the court shall remand the matter to the commission for appropriate relief. The aggrieved party has the option to accept the relief offered by the commission or may bring, within 1 year of the date of the court order, a civil action under subsection (5) as if there has been a reasonable cause determination.

(14) The commission may adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of this section and to govern the proceedings of the commission under this section.

(15) In any civil action or administrative proceeding brought pursuant to this section, a finding that a person employed by the state or any governmental entity or agency has violated s. 760.10 shall as a matter of law constitute just or substantial cause for such person's discharge.

Note.——

S. 11, ch. 92—177, provides that "if the cap on punitive damages found in section 7 of this act or any other provision of this act is held invalid, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision, and to this end the provisions of this act are declared severable. Should a court hold that the cap on punitive damages is invalid, punitive damages will be available as a remedy for violations of this act." The cap on punitive damages is found in s. 8, ch. 92—177.

# Part II Fair Housing Act

## 760.20 Fair Housing Act; short title.——

Sections 760.20—760.37 may be cited as the "Fair Housing Act."

## 760.21 State policy on fair housing.——

It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.

## 760.22 Definitions.——

As used in ss. 760.20—760.37, the term:

(1) "Commission" means the Florida Commission on Human Relations.

(2) "Covered multifamily dwelling" means:

(a) A building which consists of four or more units and has an elevator; or

(b) The ground floor units of a building which consists of four or more units and does not have an elevator.

(3) "Disability" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063.

(4) "Discriminatory housing practice" means an act that is unlawful under the terms of ss. 760.20—760.37.

(5) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

(6) "Familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

(7) "Family" includes a single individual.

(8) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(9) "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C.F.R. part 115 s. 115.6.

(10) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

## 760.23 Discrimination in the sale or rental of housing and other prohibited practices.——

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, disability, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, disability, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, disability, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, disability, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, disability, familial status, or religion.

(6) The protections afforded under ss. 760.20—760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with physical disabilities, commonly cited as ANSI A117.1—1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

## 760.24 Discrimination in the provision of brokerage services.——

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, disability, familial status, or religion.

## 760.25 Discrimination in the financing of housing or in residential real estate transactions.——

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, disability, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, disability, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2) (a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, disability, familial status, or religion.

(b) As used in this subsection, the term "residential real estate transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:

a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

b. Secured by residential real estate.

2. The selling, brokering, or appraising of residential real property.

## 760.26 Prohibited discrimination in land use decisions and in permitting of development.—

It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

## 760.27 Prohibited discrimination in housing provided to persons with a disability or disability-related need for an emotional support animal.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Emotional support animal” means an animal that does not require training to do work, perform tasks, provide assistance, or provide therapeutic emotional support by virtue of its presence which alleviates one or more identified symptoms or effects of a person’s disability.

(b) “Housing provider” means any person or entity engaging in conduct covered by the federal Fair Housing Act or s. 504 of the Rehabilitation Act of 1973, including the owner or lessor of a dwelling.

(2) REASONABLE ACCOMMODATION REQUESTS.—To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the provision of housing to a person with a disability or disability-related need for, and who has or at any time obtains, an emotional support animal. A person with a disability or a disability-related need must, upon the person’s request and approval by a housing provider, be allowed to keep such animal in his or her dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal. Unless otherwise prohibited by federal law, rule, or regulation, a housing provider may:

(a) Deny a reasonable accommodation request for an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others, which threat cannot be reduced or eliminated by another reasonable accommodation.

(b) If a person’s disability is not readily apparent, request reliable information that reasonably supports that the person has a disability. Supporting information may include:

1. A determination of disability from any federal, state, or local government agency.

2. Receipt of disability benefits or services from any federal, state, or local government agency.

3. Proof of eligibility for housing assistance or a housing voucher received because of a disability.

4. Information from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed or certified practitioner or provider in good standing with his or her profession’s regulatory body in another state but only if such out-of-state practitioner has provided in-person care or services to the tenant on at least one occasion. Such information is reliable if the practitioner or provider has personal knowledge of the person’s disability and is acting within the scope of his or her practice to provide the supporting information.

5. Information from any other source that the housing provider reasonably determines to be reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

(c) If a person’s disability-related need for an emotional support animal is not readily apparent, request reliable information that reasonably supports the person’s need for the particular emotional support animal being requested. Supporting information may include:

1. Information identifying the particular assistance or therapeutic emotional support provided by the specific animal from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed or certified practitioner or provider in good standing with his or her profession’s regulatory body in another state. Such information is reliable if the practitioner or provider has personal knowledge of the person’s disability and is acting within the scope of his or her practice to provide the supporting information.

2. Information from any other source that the housing provider reasonably determines to be reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

(d) If a person requests to keep more than one emotional support animal, request information regarding the specific need for each animal.

(e) Require proof of compliance with state and local requirements for licensing and vaccinating each emotional support animal.

(3) REQUEST LIMITATIONS.—

(a) Notwithstanding the authority to request information under subsection (2), a housing provider may not request information that discloses the diagnosis or severity of a person’s disability or any medical records relating to the disability. However, a person may disclose such information or medical records to the housing provider at his or her discretion.

(b) A housing provider may develop and make available to persons a routine method for receiving and processing reasonable accommodation requests for emotional support animals; however, a housing provider may not require the use of a specific form or notarized statement, or deny a request solely because a person did not follow the housing provider’s routine method.

(c) An emotional support animal registration of any kind, including, but not limited to, an identification card, patch, certificate, or similar registration obtained from the Internet is not, by itself, sufficient information to reliably establish that a person has a disability or a disability-related need for an emotional support animal.

(4) LIABILITY.—A person with a disability or a disability-related need is liable for any damage done to the premises or to another person on the premises by his or her emotional support animal.

(5) APPLICABILITY.—This section does not apply to a service animal as defined in s. 413.08.

## 760.29 Exemptions.——

(1) (a) Nothing in ss. 760.23, 760.25 and 760.27 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(b) For the purposes of paragraph (a), a person is deemed to be in the business of selling or renting dwellings if the person:

1. Has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or interest therein;

2. Has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or

3. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(2) Nothing in ss. 760.20—760.37 prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same

religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nothing in ss. 760.20-760.37 prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) Nothing in ss. 760.20-760.37 requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

(4) (a) Any provision of ss. 760.20-760.37 regarding familial status does not apply with respect to housing for older persons.

(b) As used in this subsection, the term "housing for older persons" means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;

2. Intended for, and solely occupied by, persons 62 years of age or older; or

3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(c) Housing may still be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or

2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

(d) A person is not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good-faith reliance on the application of the exemption only by showing that:

1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and

2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

A county or municipal ordinance regarding housing for older persons may not contravene the provisions of this subsection.

(5) Nothing in ss. 760.20—760.37:

(a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, disability, familial status, or religion.

(b) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.

(c) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(d) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under chapter 893.

## 760.30 Administration of ss. 760.20—760.37.——

(1) The authority and responsibility for administering ss. 760.20—760.37 is in the commission.

(2) The commission may delegate any of its functions, duties, and powers to its employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under ss. 760.20—760.37.

## 760.31 Powers and duties of commission.——

The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state.

(2) Publish and disseminate reports, recommendations, and information derived from such studies.

(3) Cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the state which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices.

(4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of ss. 760.20—760.37.

(5) Adopt rules necessary to implement ss. 760.20—760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission rules shall clarify terms used with regard to accessibility for persons with disabilities, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons.

## 760.32 Investigations; subpoenas; oaths.——

(1) In conducting an investigation, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation, provided the commission first complies with the provisions of the State Constitution relating to unreasonable searches and seizures. The commission may issue subpoenas to compel its access to or the production of such materials or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. The commission may administer oaths.

(2) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of such respondent and shall state that it was issued at her or his request.

(3) Within 5 days after service of a subpoena upon any person, such person may petition the commission to revoke or modify the subpoena. The commission shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(4) In case of refusal to obey a subpoena, the commission or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.

## 760.34 Enforcement.——

(1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints shall be in writing and contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the aggrieved person whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20—760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The exemption from s. 119.07(1) specified in this subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(2) Any person who files a complaint under subsection (1) must do so within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must be verified.

(3) If a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20—760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20—760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days after from the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) The aggrieved person may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination under s. 760.35 to enforce the rights granted or protected by ss. 760.20—760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the agrrieved person, the Attorney General may bring an action in the name of the state on behalf of the aggrieved person to enforce ss. 760.20—760.37.

(5) In any proceeding brought under this section or s. 760.35, the burden of proof is on the complainant.

(6) If an action filed in court under this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

(7) (a) The commission may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with ss. 760.20—760.37. The commission does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action.

(b) The court may impose the following fines for each violation of ss. 760.20—760.37:

1. Up to $10,000, if the respondent has not previously been found guilty of a violation of ss. 760.20—760.37.

2. Up to $25,000, if the respondent has been found guilty of one prior violation of ss. 760.20—760.37 within the preceding 5 years.

3. Up to $50,000, if the respondent has been found guilty of two or more violations of ss. 760.20—760.37 within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of ss. 760.20—760.37, the financial circumstances of the respondent, and the goal of deterring future violations of ss. 760.20—760.37.

(c) The court shall award reasonable attorney fees and costs to the commission in any action in which the commission prevails.

(8) Any local agency certified as substantially equivalent may institute a civil action in any appropriate court, including circuit court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency does not have to petition for an administrative hearing or exhaust its administrative remedies before bringing a civil action. The court may impose fines as provided in the local fair housing law.

## 760.35 Civil actions and relief; administrative procedures.——

(1) An aggrieved person may commence a civil action no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought under this section or s. 760.34 before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated before the issuance of any court order issued under the authority of ss. 760.20—760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the ss. 760.20—760.37 is not affected.

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

(4) If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney fees and costs.

(5) (a) If the commission is unable to obtain voluntary compliance with ss. 760.20—760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The aggrieved person may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted under s. 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission under s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

## 760.36 Conciliation agreements.——

Any conciliation agreement arising out of conciliation efforts by the Florida Commission on Human Relations pursuant to the Fair Housing Act must be agreed to by the respondent and the complainant and is subject to the approval of the commission. Notwithstanding the provisions of s. 760.11(11) and (12), each conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Florida Fair Housing Act. .

## 760.37 Interference, coercion, or intimidation; enforcement by administrative or civil action.——

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20—760.37. This section may be enforced by appropriate administrative or civil action.

# Part III Miscellaneous

## 760.40 Genetic testing; informed consent; confidentiality.——

(1) As used in this section, the term "DNA analysis" means the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(2) (a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens as provided in s. 943.325, DNA analysis may be performed only with the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who performs DNA analysis or receives records, results, or findings of DNA analysis must provide the person tested with notice that the analysis was performed or that the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. The notice must also state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

## 760.50 Discrimination on the basis of acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, and human immunodeficiency virus prohibited.——

(1) The Legislature finds and declares that persons infected or believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3) (a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and

2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

(4) (a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) A person may not fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional or health care worker who treats or provides patient care to persons infected with human immunodeficiency virus.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information in the possession of a public employer is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

(6) (a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of $1,000 or actual damages, whichever is greater.

2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of $5,000 or actual damages, whichever is greater.

3. Reasonable attorney fees.

4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

## 760.51 Violations of constitutional rights, civil action by the Attorney General; civil penalty.——

(1) Whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state, the Attorney General may bring a civil or administrative action for damages, and for injunctive or other appropriate relief for violations of the rights secured. Any damages recovered under this section shall accrue to the injured person. The civil action shall be brought in the name of the state and may be brought on behalf of the injured person. The Attorney General is entitled to an award of reasonable attorney fees and costs if the Department of Legal Affairs prevails in an action brought under this section.

(2) Any person who interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state is liable for a civil penalty of not more than $10,000 for each violation. This penalty may be recovered in any action brought under this section by the Attorney General. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

## 760.60 Discriminatory practices of certain clubs prohibited; remedies.——

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

(2) A person who has been discriminated against in violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed under subsection (2), to give notice of its intent to resolve the complaint, or if the commission or the Attorney General fails to resolve the complaint within 45 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.

## 760.80 Minority representation on boards, commissions, councils, and committees.——

(1) It is the intent of the Legislature to recognize the importance of balance in the appointment of minority and nonminority persons to membership on statutorily created decision making and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. In addition, the Legislature recognizes the importance of including persons with physical disabilities on such panels. Furthermore, the Legislature recognizes that statutorily created decision making and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Florida, and the selection of the best-qualified candidates is the paramount obligation of the appointing authority.

(2) As used in this section, “minority person” means:

(a) An African American; that is, a person having origins in any of the racial groups of the African Diaspora.

(b) A Hispanic American; that is, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American; that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(d) A Native American; that is , a person who has origins in any of the Indian Tribes of North America prior to 1835.

(e) An American woman.

(3) In appointing members to any statutorily created decisionmaking or regulatory board, commission, council, or committee of the state, the appointing authority should select, from among the best-qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each group of minority persons specified in subsection (2) represents in the population of the state as a whole or, in the case of a local board, commission, council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise, or persons of the underrepresented minority group cannot be recruited. When appointing members to a statutorily created decision making or regulatory board, commission, council or committee which was created to address a specific issue relating to minority persons, the appointing authority should give weight to the minority group that the board, commission, council or committee was created to serve. If the size of the board, commission, council, or committee precludes an accurate representation of all minority groups, appointments should be made which conform to the requirements of this section insofar as possible. If there are multiple appointing authorities for the board, commission, council, or committee, they shall consult with each other to ensure compliance with this section.

(4) Each appointing authority described in subsection (3) shall submit a report to the Secretary of State annually by December 1 which discloses the number of appointments made during the preceding year from each minority group and the number of nonminority appointments made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. In addition, information shall be included in the report detailing the number of physically disabled persons appointed to boards, commissions, councils, and committees in the previous calendar year. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant’s race, ethnicity, gender, physical disability, if applicable, and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant’s identity or of any other information made confidential by law.

# Part IV Environmental Equity and Justice Commission

## 760.85 Environmental Equity and Justice Commission created; membership, duties; public hearings; administration. ⎯

(1) The Legislature hereby establishes an Environmental Equity and Justice Commission, the purpose of which is to examine and determine the possible disproportionate and cumulative concentration of environmental hazards in people of color and low-income communities, to assess how Florida can best address these inequities, if any, with emphasis on future prevention, and to ensure that the public benefits resulting from the work of Florida’s agencies will be fully and equitably realized by communities of color and low income, taking into account the greater degree of risk to which such communities may be exposed.

(2) The commission shall consist of 17 members as follows:

(a) One member of the House of Representatives and one member of the Senate.

(b) Two members representing the civil rights community.

(c) Two representatives of the environmental community, including grassroots community organizations.

(d) Two members representing the business community.

(e) One member from the Department of Environmental Protection.

(f) One member from the Department of Health and Rehabilitative Services.

(g) Two members representing major facilities regulated by the Department of Environmental Protection, one representing the private sector, and one representing the public sector.

(h) Two members representing local government, one representing cities and one representing counties.

(i) Two members representing the universities, including historically black college and university representatives.

(j) One environmental risk assessment professional.

(k) Two of the above members of the commission shall be from counties with populations less than 50,000, but shall not be selected from the same category of appointment.

(3) The Governor shall make the appointments described in subsection (2) after soliciting input from the Speaker of the House of Representatives, the President of the Senate, the Chair of the State Conference of Black Legislators, and the Chair of the Hispanic Caucus. The members of the commission shall be appointed by September 30, 1994. The commission shall meet initially and make study assignments by November 30, 1994, and shall complete its study assignments and issue a preliminary written report by June 30, 1995.

(4) The commission members shall serve without compensation, but shall be reimbursed for per diem and travel expenses pursuant to s. 112.061. The commission shall encourage private contributions, which shall be used to assist low-income individuals and people of color to participate in the hearings.

(5) The commission shall conduct a scientific analysis, including case studies, and submit a written report to the Speaker of the House of Representatives and the President of the Senate by December 31, 1995, which shall include, but not be limited to:

(a) A listing of the major targeted sites located in Florida, with historical and current demographic information, including health statistics of the surrounding population of each site. For purposes of this act, targeted sites shall mean a representative sample of sites both in minority and low-income neighborhoods, as well as other socioeconomic neighborhoods, throughout the state, but to include only those businesses and facilities regulated by the Department of Environmental Protection, including government-owned facilities; facilities regulated by the department through delegation to any local governments or water management districts; and the Superfund National Priority List sites.

(b) A review of past enforcement actions taken by the Environmental Protection Agency or the Department of Environmental Protection for violations affecting human health in any targeted site.

(c) A review of factors, including economic factors, that may have caused targeted sites which pose a potential threat to human health to be concentrated in low-income communities and communities of color in Florida.

(d) A review of statutes, rules, and policies used by state, regional and local governments, and a review of the role played by these entities in influencing or making siting and land use decisions, that may pose a potential threat to human health in the location of targeted sites.

(e) A review of data and methodologies by which state, regional, and local governments might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health.

(f) A review of enforcement statutes and rules related to targeted sites to assess whether actual enforcement practices have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve low-income communities and people of color.

(g) A review of the efforts by state and local agencies in ensuring equitable representation of people of color and low-income communities in their workforce and in helping youth from these communities learn about career opportunities in the environmental field.

(h) A review of methods used by the Department of Environmental Protection in communicating with people of color and low-income communities and recommendations on how the department can be more “user friendly” to people of color and low-income communities.

(i) A review of approaches to ensure consideration of environmental equity and justice issues when formulating and implementing policies, procedures, and legislation within agencies and other institutions.

(j) Consideration of the advisability of creating a permanent institutional review entity to deal with environmental equity issues. In addition, the commission shall prepare model legislation, if needed, to address needs identified in the report, to be considered by the Legislature in 1996.

## 760.851 Public hearings; location.⎯

(1) Following completion of the preliminary report provided for in 760.85(3), the commission shall conduct at least five public hearings, and may meet more frequently upon the vote of the majority of the commission. The location of the hearings shall be determined by the commission, in a manner which allows for participation by citizens in all parts of the state. The final report shall reflect consideration of the comments presented at the public hearings.

(2) For administrative purposes only, the commission is assigned to Florida Agricultural and Mechanical University. The School of Business within Florida Agricultural and Mechanical University shall provide assistance when requested by the commission. However, in the performance of its powers and duties, the commission shall not be subject to control, supervision, or direction by Florida Agricultural and Mechanical University.

## 760.852 Access to records. ⎯

The commission shall have access to all nonconfidential or exempt records, files, and reports from any program, service, or facility that is operated, funded, or regulated by either the Department of Environmental Protection or the Department of Health and Rehabilitative Services which are material to its monitoring duties and are in the custody of either department. The commission’s monitoring may not impede or obstruct matters under investigation by department, law enforcement, or judicial authorities. The commission may not conduct on-site inspections or subpoena records. Access shall not be granted if a specific procedure or prohibition for reviewing records is required by federal law and regulations which supersede state law.

## 760.853 Judicial review. ⎯

This act is intended only to ensure equitable regulation and enforcement of environmental laws and rules and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the businesses studied, or the State of Florida, including municipal and county governments, or their officers, directors, or employees. This act shall not be construed to create any right to administrative or judicial review involving the compliance or noncompliance of the businesses studied, or the State of Florida, including municipal and county governments, or their agents, officers, directors, or employees.

## 760.854 Center for Environmental Equity and Justice.—

(1) There is hereby established the Center for Environmental Equity and Justice.

(2) The purpose of the center is to conduct and facilitate research, develop policies, and engage in education, training, and community outreach with respect to environmental equity and justice issues.

(3) The Center for Environmental Equity and Justice shall be established at the Florida Agricultural and Mechanical University within the Environmental Sciences Institute.

(4) The Center for Environmental Equity and Justice shall sponsor students to serve as interns at the Department of Health, the Department of Environmental Protection, the Department of Community Affairs, and other relevant state agencies. The Center may enter into a memorandum of understanding with these agencies to address environmental equity and justice issues.

# Florida Administrative Code

**[61-20: Community Association Management](#FAC_CommunityAssociationManagement)**

[**61B-17: Filings**](#FAC_Filings)

[**61B-18: Documents**](#FAC_Documents)

**[61B-20: Developer Obligations and Resolution Guidelines For Condominium Developers](#_DEVELOPER_OBLIGATIONS_AND_1)**

[**61B-21: Condominium Resolution Guidelines For Unit Owner Controlled Associations**](#_61B-21.001_Definitions_and_1)

[**61B-22: Financial and Accounting Requirements; Budgets Reserves and Guarantees**](#FAC_FinancialAccounting)

[**61B-23: The Association**](#FAC_TheAssociation)

[**61B-25: Volunteer Mediation Rules**](#FAC_VolunteerMediation)

[**61B-29: Mobile Home Rules Definitions**](#FAC_MobileHomeRulesDefinitions)

[**61B-30: Mobile Home Advertising Prospectus Rule**](#FAC_MobileHomeAdvertising)

[**61B-31: Mobile Home Prospectus and Rental Agreement Rule**](#FAC_MobileHomeProspectusAndRental)

[**61B-32: Mobile Home Mediation Rules**](#FAC_MobileHomeMediationRules)

[**61B-37: Timeshare Plans**](#TimeSharePlans)

[**61B-40: Timeshare Accounting and Financial Reporting Requirements Scope; Books and Financial Records; Budgets; Guarantees; Reserves; Financial Reporting**](#T61b_40)

[**61B-45: Mandatory Non-Binding Arbitration Rules of Procedure**](#FAC_MandatoryNonBind)

[**61B-50: The Rules of Procedure Governing Recall Arbitration**](#FAC_TheRulesOfProcedure)

[**61B-75: Cooperatives**](#FAC_Cooperatives)

[**61B-76: Accounting and Financial Reporting Requirements; Budgets, Guarantees and Reserves, Financial Statements and Reports For Cooperatives**](#FAC_AccountingFinancialReporting)

[**61B-77: Resolution Guidelines For Cooperative Developers**](#FAC_ResolutionGuidelines)

[**61B-78: Association Fee and Mailing Address; Cooperative Resolution Guidelines For Unit Owner Controlled Associations**](#FAC_AssociationFeeMailingAddress)

[**61B-79: Filings**](#FAC_Filings61B79)

[**61B-80: The Arbitration Rules of Procedure Governing Recall and Election Disputes In Homeowners’ Associations**](#FAC_TheArbitrationRulesOf)

# [61B-81: Substantive Rules For Recalls In Homeowners’ Associations](#FAC_SubstantiveRules)

[**61E-14: Community Association Managers’ Regulatory Council**](#FAC_CommunityAssociationManagersRegulato)

[**64E-9: Public Swimming Pools and Bathing Places**](#FAC_PublicSwimmingPools)

[**61J2: Florida Real Estate Commission**](#FAC_FloridaRealEstateCommission)

# Community Association Management

**PART 1 CAM LICENSURE**

**61-20.001 Licensing Procedure for Manager's License.**

[**61-20.002 Inactive Status and Renewal of Manager’s License.**](#_Toc333993186)

[**61-20.0025 Exemption of Spouses of Members of Armed Forces from Licensure   
 Renewal Provisions.**](#_Toc333993187)

[**61-20.003 Business Entity Registration.**](#_Toc333993188)

[**61-20.004 Unexcused Absences.**](#_Toc333993189)

[**61-20.010 Disciplinary Guidelines.**](#_Toc333993190)

[**61-20.011 Citations.**](#citations61_20_011)

[**61-20.012 Mediations**](#mediation_6120_012)**.**

# PART I CAM LICENSURE

## 61-20.001 Licensing Procedure for Manager's License.

[See also: *, 468.432, 468.433, 468.435 F.S..*](#_468.432_Licensure_of)

(1) Definitions.

(a) "Charge" or "Charges". These terms refer to the official document in any criminal proceeding, whether styled an "Information", "Indictment", or otherwise, which document specifies the charges against the defendant, and which document is filed in any court of Florida, another state or country, or the United States government.

(b) "True copy" or "Certified true copy". These phrases mean a copy of a court or government agency paper which bears an original certification of the clerk or other official of the court or agency to the effect that the papers are accurate copies of the court or agency.

(c) "Criminal record". An applicant's criminal record, for purposes of this rule, includes any misdemeanor or felony charge filed against the applicant in the courts of any state or federal district or territory, or other country, on any subject matter whether related to community association management or not, concerning which charge the applicant was found guilty, or pled guilty, or pled no contest, regardless of whether or not there was an adjudication by the court, and regardless of whether the matter is under appeal by the applicant. The phrase includes such charges even where the crime was subsequently pardoned or civil rights have been restored. The phrase does not include criminal convictions which were finally reversed or vacated on appeal; nor does it include charges of which the applicant was found not guilty, or which were finally dismissed; nor does it include matters as to which at time of application an order of sealing or expunction has been issued by a court of competent jurisdiction.

(2) (a) No person who is subject to the provisions of these rules shall provide community association management services without first complying with the requirements of chapter 61-20, Florida Administrative Code.

(b) Application for License. All persons subject to the provisions of these rules shall apply to the division for a community association manager's license, on a [BPR form 33-009, APPLICATION FOR LICENSURE AS A COMMUNITY ASSOCIATION MANAGER](http://www.myfloridalicense.com/dbpr/pro/cam/documents/cam_initial_licensure_application_package_enterable.pdf), incorporated herein by reference and effective 4-28-94. A non-refundable fee of $50 shall be included with the application.

(3) Review of Application.

(a) Within 30 days of the receipt of the application the division shall determine if the application is complete. A complete application refers to an approved division application form which contains all of the information requested on the form and all documentation required to be furnished with the application (including the applicant's criminal history record provided by the Florida Department of Law Enforcement), as required by the application or by any statute or rule of the division, and the fee required by paragraph (2)(b) of this rule. The applicant's criminal history records, provided by the Florida Department of Law Enforcement upon request by the division, must be received by the division for the applicant's application to be considered complete. An application which contains errors, omissions, or which requires additional or clarifying information is not considered a complete application.

(b) Within 15 days of receipt of the application, the division shall request the applicant's criminal history record from the Florida Department of Law Enforcement. If the criminal history record provided by the Florida Department of Law Enforcement shows law enforcement information not included on the applicant's application, the division will notify the applicant in writing of the discrepancy and the applicant shall be required to provide an explanation and documentation as necessary to provide the division the information needed to be fully informed of the applicant's criminal record. Where an arrest or charge was dismissed, or formal statement of nolle prosse by the prosecuting authority was issued, or otherwise disposed of without resulting in a criminal record as defined herein, a copy of the document (need not be certified true copy) issued by the court or other government agency resulting in such disposition shall be sufficient.

(c) If the applicant has been convicted of sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance as specified in section 775.16, Florida Statutes, the applicant must submit, as part of the application, documentation that the conditions of section 775.16(2), Florida Statutes, have been met.

(d) If the application is not complete, the division shall, within 30 days of receipt, notify the applicant in writing and request the additional information and documentation needed to complete the application. The applicant shall have 60 days from the date of the notice in which to correct the errors or omissions and provide the additional information or explain in writing why such errors or omissions cannot be corrected or such information cannot be provided within 60 days.

(4) General Procedure.

(a) If the deficiency is not timely corrected or the applicant fails to provide any explanation why it cannot respond to such a request, the application shall be denied. The application shall be denied solely on the grounds that the application is not complete. If the applicant timely files some but not all of the requested information or corrects some but not all of the errors or omissions in response to the division's notice, the timely filed information and other materials shall be included in the application file and no additional deficiency notice shall be sent by the division. At the expiration of 60 days after the date of the deficiency notice, the division shall make a decision to approve, subject to meeting the examination requirements of rule 61E14-1.002, F.A.C., Florida Administrative Code, or deny the application based on the information and other materials contained in the application filed and shall notify the applicant of the decision within 90 days from the applicant's last timely filed information in response to the division's deficiency notice.

(b) If the applicant files a timely response indicating that the requested information and corrections cannot be supplied, the division shall make a decision as to whether the application is approved, subject to meeting the examination requirements of rule 61E14-1.002, F.A.C., Florida Administrative Code, or denied, based on the information currently contained in the application file and so notify the applicant of the decision within 90 days from the applicant's last timely filed information in response to the division's deficiency notice.

(c) If all requested information and corrections are timely filed, division shall make a decision to approve, subject to meeting the examination requirements of rule 61E14-1.002, F.A.C., Florida Administrative Code, or deny the application and shall notify the applicant of the decision within 90 days of receipt of the information and other materials which make the application complete.

(d) The applicant shall supply the division with required documentation (as specified below) as to all matters which comprise the applicant's criminal record. All documentation must be completely legible. Required documentation generally includes, as applicable:

1. For arrests, the police arrest affidavit or arrest report or similar document (need not be certified true copy);

2. The charges (certified true copy);

3. Plea, judgment and sentence (certified true copy); and

4. Order of entry into pre-trial intervention, and where applicable, the order of termination of pre-trial intervention showing dismissal of charges (all must be certified true copies).

(e) Situations may arise where some government agency's records suggest that a criminal record exists regarding the applicant (e.g., FDLE criminal history records show a criminal conviction in another state), but the court or law enforcement agency that should have the actual records denies having them or cannot produce them or cannot produce whole, legible copies of them. In such instances the burden is upon the applicant to show by clear and convincing evidence that the records are not available or do not exist. It is generally sufficient if the applicant supplies a written statement on the letterhead of the agency, that would apparently be the custodian of the record, signed by a representative of the agency, stating that they have no record of such matter, or the record is lost or was damaged or destroyed, or otherwise stating why the record cannot be produced. Upon receipt of such a document, the burden shifts to the division to find other evidence to establish the existence of the matter, and failing to find same, the division shall enter into the applicant's division record a memorandum or other documentation to memorialize the situation, including why the division took no action on the apparent suggestion of criminal record, and thereafter the division does not hold the matter against the applicant.

(5) Good Moral Character.

(a) Unless the division denies the application for incompleteness under paragraph (4)(a) of this rule, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. Demonstration of all of the following will establish the applicant's good moral character:

1. The completion of a criminal history records check by the Florida Department of Law Enforcement and self-disclosure by the applicant that establishes that the applicant has no criminal record; and

2. The absence of civil lawsuits or administrative actions decided adversely to the applicant which involved matters bearing upon moral character, including, for example: fraud, dishonesty, misrepresentation, concealment of material facts, or practicing a regulated profession without a license or certificate as required by law or rule; and

3. No prior history of violations by the applicant of chapter 468, Part VIII, Florida Statutes, any rule of the division relating to community association management, or any lawful order of the division previously entered in a disciplinary proceeding, or of failing to comply with a lawfully issued subpoena of the division; and

4. The absence of other information generated in the course of the application process which negatively reflects on the applicant's moral character including, for example: gross misconduct or gross negligence in the applicant's prior work experience whether or not the prior work was related to the professional responsibilities of a community association manager; and

5. That the applicant has not committed the following in connection with an application:

a. Given to the division a check for payment of any fee when there are insufficient funds with which to pay the same, if the applicant, upon notification by the division, fails to redeem the check or otherwise pay the fee within 30 days of the date of written notification by the division; or

b. Failed to provide full and complete disclosure, or failed to provide accurate information.

(b) If the applicant has failed to establish good moral character under paragraph (5)(a), the division will then consider the following additional factors to determine whether an applicant has good moral character for purposes of licensure under chapter 468, Part VIII, Florida Statutes:

1. If commission of a second degree misdemeanor is the only reason the applicant did not meet the requirements of paragraph (5)(a) of this rule, the applicant will be considered to have good moral character. However, if there are also other reasons why the applicant did not meet the requirements of paragraph (5)(a) of this rule, the second degree misdemeanor will be considered along with the other factors in determining the applicant's good moral character;

2. If the applicant has committed a first degree misdemeanor or a felony, and the applicant's civil rights have been restored, this alone shall not preclude a finding of good moral character unless the crime is directly related to the professional responsibilities of a community association manager. Crimes that are deemed to be directly related to the professional responsibilities of a community association manager include, for example, fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. The applicant has the burden of proving restoration of civil rights by certified true copy of government or court records reflecting such action.

3. Whether the applicant has exhibited a pattern of unlawful behavior which would indicate that the applicant has little regard for the law, the rules of society, or the rights of others. All unlawful acts will be considered in determining whether the applicant has exhibited a pattern of unlawful behavior, even though any one of the unlawful acts by itself might not be directly related to the professional responsibilities of a community association manager. It is the applicant's repeated flaunting of or ignoring the law that evinces a lack of the moral character needed to perform the duties and assume the responsibilities of a community association manager, not the particular relationship of any one of the violations to the professional responsibilities of a community association manager.

4. Whether the applicant is disqualified from applying for a license by reason of section 775.16, Florida Statutes, pertaining to conviction of certain offenses involving controlled substances.

5. Conduct of the applicant relied upon by the division to determine that the applicant lacks good moral character shall be directly related to the professional responsibilities of a community association manager.

6. Written evidence the division will consider in determining the applicant's good moral character shall include:

a. A statement from the applicant explaining the applicant's criminal/unlawful conduct and the reason the applicant believes the division should issue the license;

b. Evidence as to the length of time since the conduct occurred or the age of the applicant at the time the conduct occurred;

c. Evidence of successful rehabilitation;

d. Recommendations from parole or probation employees who have supervised the applicant;

e. Recommendations from the prosecuting attorney or sentencing judge;

f. Character references from individuals other than immediate family members, who have know the applicant for 3 years or longer;

g. Police reports or transcripts which reveal the underlying facts of the crime;

h. Evidence that the conduct was an isolated occurrence contrary to the applicant's normal pattern of behavior; and

i. Evidence of community or civil activities with which the applicant has been associated. It is the applicant's responsibility to provide such mitigating evidence to the division.

7. If the applicant makes incomplete, misleading or false statements regarding material facts in making an application, such action will establish the applicant's lack of good moral character, and the application will be denied.

(c) If the applicant has failed to meet the requirements of paragraph (5)(a) of this rule and has been unable to present sufficient evidence to establish good moral character pursuant to paragraph (5)(b) of this rule within the time limitations of this rule and section 120.60, Florida Statutes, the application will be denied. However, the applicant will be given an opportunity by the division to waive the time limits of this rule and section 120.60, Florida Statutes, if it appears to the division that, through the submission of additional information or with additional time for investigation and verification, the applicant's good moral character might be established. The applicant bears the burden of affirmatively providing the division with evidence of good moral character.

(6) If the application is denied, the division shall proceed as provided in subsection 61B-55.0011(1), Florida Administrative Code. The unsuccessful applicant who requests a hearing for issuance of a license under this rule shall have the burden of proof to establish, by a preponderance of the evidence, entitlement to the requested license.

## 61-20.002 Inactive Status and Renewal of Manager’s License.

[See also: *468.433, 468.435, 468.436 F.S..*](#_468.433_Licensure_by)

(1) Changing an Active License to an Inactive License and Renewal of an Inactive License. A licensee desiring to maintain a valid license but who will not be providing community association management services for a period of time, may change the status of his/her license to inactive status, as provided in Department of Business and Professional Regulation Rule 61-6.003, F.A.C.

(a) In order to place an active license in an inactive status the licensee shall complete BPR form CAM-4305, Community Association Change of Status Application, effective 10/23/2002, incorporated by reference, available on the DBPR Web site at <https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=38&SID> or by written request addressed to the Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-0771. A non-refundable inactive license fee of $10 shall accompany the application as set forth in Rule 61E14-3.001, F.A.C., unless the status change request is made at the end of a renewal period.

(b) All inactive licenses shall expire at the end of the renewal period (on September 30 of the next even numbered year). Inactive licensees shall be notified by the Department of Business and Professional Regulation pursuant to Section 455.273, F.S., and instructed how to proceed. Renewals shall be completed on or before September 30 of each renewal year. All applicable fees must be paid and compliance with the requirements set forth in Rule 61-20.208, F.A.C., must be met. The first failure to renew on or before September 30 of a renewal year shall result in a delinquent status license pursuant to Department of Business and Professional Regulation Rule 61-6.002, F.A.C. Failure to renew a delinquent status license results in a null license pursuant to Department of Business and Professional Regulation subsection 61-6.004(1), F.A.C.

(2) Changing an Inactive License to an Active License. In order to reactivate from an inactive status, the licensee shall complete BPR form CAM-4305, Community Association Manager Change of Status Application, effective 10/23/2002, available on the DBPR Web site at <https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=38&SID>, or by written request from the Council at 1940 N. Monroe Street, Tallahassee, FL 32399. The reactivated license shall expire in accordance with the schedule set forth in Rule 61-6.001, F.A.C., and be renewed at the end of the current renewal period, along with all other licenses.

(3) Renewal of a Delinquent license whether Active or Inactive shall require submission of a Renewal application to the Council on or before September 30 to be processed for renewal. If September 30 falls on a Saturday, Sunday, or legal holiday, the time period is deemed extended to the next working day. Proper form shall mean the renewal application is complete, all applicable fees are paid and all applicable continuing education hours have been completed prior to submission. If a renewal application is submitted after September 30 of the renewal year, the license becomes null. The holder of a null license desiring to perform community association management services shall be required to make an initial application to the division and proceed as provided in Rules 61-20.001 and 61-20.502, F.A.C.

## 61-20.0025 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.

A licensee who is the spouse of a member of the Armed Forces of the United States and was caused to be absent from the State of Florida because of the spouse’s duties with the armed forces shall be exempt from all licensure renewal provisions during such absence. The licensee must show proof to the Board of the absence and the spouse’s military status.

## 61-20.003 Business Entity Registration.

(1) A corporation, association or other organization or entity which engages in, or is desirous of engaging in, the business of community association management shall be registered under this rule and shall employ only licensed persons in the direct provision of community management services. Such entities shall, no later than October 1, 1988, register with the division, on a BPR form 33-008, COMMUNITY ASSOCIATION MANAGEMENT BUSINESS ENTITY REGISTRATION, incorporated herein by reference and effective February 5, 1991.

(2) No entity described in subsection (1) above may, subsequent to October 1, 1988, conduct association management business or use its name in the conduct of its business without first registering with the division.

(3) There shall be no fee required to register an entity with the division. Once an entity is registered, no renewal of the registration is required, and the registration shall be deemed valid unless suspended or revoked pursuant to section 468.436, Florida Statutes, or rule 61E14-2.001, Florida Administrative Code.

(4) As officers or licensed personnel or the business address change, the division shall be notified on DBR form 33-008, Community Association Management Business Entity Registration, within 60 days of such change.

## 61-20.004 Unexcused Absences.

(1) No council member may be absent from three (3) consecutive regularly scheduled council meetings unless those absences are excused. Reasons for granting excused absences shall be, but are not limited to the following: ..

(a) Illness or injury of the council member;

(b) Illness, injury or death of a member of the council member’s family;

(c) Court order, subpoena, or business with a court which has the sole prerogative of setting the date of such business;

(d) Unavoidable travel delays or cancellations;

(e) Any conflict or extraordinary circumstance or event approved by the council Chair of the individual action on behalf of the Chair;

(2) An otherwise excused absence is not excused if the council member fails to notify the council office of the impending absence prior to the regularly scheduled meeting at which the absence will occur unless the failure to notify the council office is the result of circumstances surrounding the reason for the absence which the council excuses after the absence has occurred.

(3) An absence for any other reason than those stated in subsection (1) or (2) constitutes an unexcused absence for the purpose of declaring a vacancy on the council after three (3) consecutive unexcused absences. The council member shall be notified, in writing, after two (2) consecutive unexcused absences that their unexcused absence at the next regularly scheduled meeting shall terminate their membership on the council.

## 61-20.010 Disciplinary Guidelines.

(1) Aggravating and Mitigating Circumstances. The department shall be entitled to deviate from the disciplinary guidelines provided by this rule upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the department prior to the imposition of a final penalty. The department must make a specific finding of mitigating or aggravating guidelines. Based upon consideration of the facts present in an individual case, the department shall consider the following factors in aggravation and mitigation when deviating from the disciplinary guidelines set forth in this rule:

(a) Danger to the public;

(b) Physical or financial harm resulting from the violation;

(c) Prior violations committed by the subject;

(d) Length of time the licensee has practiced;

(e) Deterrent effect of the penalty;

(f) Correction or attempted correction of the violation;

(g) Effect on the licensee’s livelihood;

(h) Any efforts toward rehabilitation;

(i) Any other aggravating or mitigating factor which is directly relevant under the circumstances.

(2) In imposing discipline upon applicants and licensees for any of the violations set forth below, the department shall act in accordance with the following disciplinary guidelines. The verbal identifications of violations are descriptive only; the full language of each statutory or rule provision cited must be consulted in order to determine the conduct included.

### Penalty Range

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| --- | --- | --- |
| VIOLATION | MINIMUM | MAXIMUM |
| (a) Section 468.436(2)(b)1., F.S. Violating any provision of Chapter 468, this part VIII, F.S., if not otherwise delineated in this rule. |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | $500 fine | Probation; $2500 fine; costs |
| Third Offense. | Probation; $2500 fine | One year suspension; $5000 fine; costs |
| (b) Section 468.436(2)(b)2., F.S. Violating any lawful order or rule rendered or adopted by the department or council, if not otherwise delineated in this rule. |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | $500 fine | Probation; $2500 fine; costs |
| Third Offense | Probation; $2500 fine | One year suspension; $5000 fine; costs |
| (c) Section 468.436(2)(b)3., F.S. Being convicted of or pleading nolo contendere to a felony. |  | |
| First Offense | Reprimand; $500 fine | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $1000 fine | Revocation; $5000 fine; costs |
| Third Offense | Two years suspension; $1000 fine | Revocation; $5000 fine; costs |
| (d) Section 468.436(2)(b)4., F.S.  Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts. |  | |
| First Offense | $1000 fine; costs | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $1000 fine | Revocation; $5000 fine; costs |
| Third Offense | Revocation | Revocation; $5000 fine; costs |
| (e) Section 468.436(2)(b)5., F.S.  Committing acts of gross misconduct or gross negligence in connection with the profession. |  | |
| First Offense | $500 fine | Revocation; $5000 fine; costs |
| Second Offense | $2500 fine | Revocation; $5000 fine; costs |
| Third Offense | One year suspension; one year probation; $2500 fine | Revocation; $5000 fine; costs |
| (f) Section 468.463(2)(b)6., F.S.  Contracting, on behalf of an association, with any entity in which the licensee has an undisclosed financial interest. |  | |
| First Offense | $1000 fine | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $2500 fine | Revocation; $5000 fine; costs |
| Third Offense | Revocation | Revocation; $5000 fine; costs |
| (g) Section 468.436(2)(b)7., F.S.  Violating any provision of Chapters 718, 719, or 720, F.S., during the course of performing community association services pursuant to a contract with a community association. |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | $500 fine | Probation; $2500 fine; costs |
| Third Offense | Probation; $2500 fine | One year suspension; $5000 fine; costs |
| (h) Paragraph 61E14-2.001(2)(a), F.A.C. Failing to comply with the requirements of the documents by which the association is created or operated. |  | |
| First Offense | Reprimand | One year suspension; $2500 fine; costs |
| Second Offense | One year probation; $1000 fine | One year suspension; two years probation; $5000 fine; costs |
| Third Offense | $2500 fine | Revocation; $5000 fine; costs |
| (i) Paragraph 61E14-2.001(2)(b), F.A.C. Use funds for undesignated purpose. |  | |
| First Offense | $250 fine | Revocation; $5000 fine; costs |
| Second Offense | Two year probation; $2500 fine | Revocation; $5000 fine; costs |
| Third Offense | One year suspension; Two years suspension; $5000 fine | Revocation; $5000 fine; costs |
| (j) Paragraph 61E14-2.001(2)(c), F.A.C. Failing to perform all contracted community association management services to professional standards and to the standards established by Section 468.4334(1), F.S. |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | One year probation; $500 fine | One year suspension; two years probation; $5000 fine; costs |
| Third Offense | Two years suspension; $2500 fine | Revocation; $5000 fine; costs |
| (k) Paragraph 61E14-2.001(3)(a), F.A.C.  A licensee shall not withhold possession  of records. |  |  |
| First Offense | Reprimand | One year suspension; $2500 fine; costs |
| Second Offense | $500 fine | Revocation; $2500 fine; costs |
| Third Offense | $1000 fine | Revocation; $5000 fine; costs |
| (l) Paragraph 61E14-2.001(3)(b), F.A.C.  A licensee shall not deny or delay access  to association records. |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | $500 fine | One year suspension; One year probation; $2500 fine; costs |
| Third Offense | One year probation; $3000 fine | One year suspension; Two years probation; $5000 fine; costs |

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| (m) Paragraph 61E14-2.001(3)(c), F.A.C. A licensee or registrant shall not create false records or impermissibly alter official records. |  | |
| First Offense | Reprimand; $1000 fine | One year suspension; Two years probation; $1000 fine; costs |
| Second Offense | One year suspension; two year probation; $2500 fine | Revocation; $5000 fine; costs |
| Third Offense | Two years suspension; Two years probation; $5000 fine | Revocation; $5000 fine; costs |
| (n) Paragraph 61E14-2.001(3)(d), F.A.C.  A licensee or registrant shall not fail to maintain records. |  | |
| First Offense | Reprimand | One year suspension; $1000 fine; costs |
| Second Offense | $500 fine | Two years suspension; $2500 fine; Two years probation; Costs |
| Third Offense | One year suspension; Two years probation | Revocation; $5000 fine; costs |
| (o) Section 455.271(1), F.S. Practice on a delinquent or inactive license. |  | |
| First Offense | $125 fine | $1250 fine; costs |
| Second Offense | $250 fine | $2500 fine; costs |
| Third Offense | $500 fine | Revocation; $5000 fine; costs |
| (p) Section 455.227(1)(c), F.S. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere, to a crime related to the practice of or ability to practice a licensee’s profession. |  | |
| First Offense | One year suspension; $1000 fine | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $1500 fine | Revocation; $5000 fine; costs |
| Third Offense | Two years suspension; $3000 fine | Revocation; $5000 fine; costs |
| (q) Section 455.227(1)(g), F.S. Having been found guilty in a civil proceeding for knowingly filing a false report or complaint with the department. |  | |
| First Offense | $500 fine | One year suspension $3000 fine; costs |
| Second Offense | Two years probation; $1000 fine | Revocation; $5000 fine; costs |
| Third Offense | One year suspension; $2500 fine; costs | Revocation; $5000 fine; costs |
| (r) Section 455.227(1)(h), F.S. Attempting to obtain, obtaining, or  renewing a license by bribery, fraudulent misrepresentation, or error. |  | |
| First Offense | $1000 fine | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $3000 fine | Revocation; $5000 fine; costs |
| Third Offense | Two years suspension; $5000 fine | Revocation; $5000 fine; costs |
| (s) Section 455.227(1)(i), F.S. Failing to report any person in violation of this part or the chapter regulating the alleged violator. |  | |
| First Offense | Reprimand | One year suspension; $3000 fine; costs |
| Second Offense | Reprimand; One year probation | Two year suspension; $5000 fine; costs |
| Third Offense | Reprimand; Two years probation | Revocation; $5000 fine; costs |
| (t) Section 455.227(1)(j), F.S. Aiding, assisting, procuring, employing, or advising any unlicensed person or entity. |  | |
| First Offense | Reprimand | One year suspension; $3000 fine; costs |
| Second Offense | $1000 fine | Two years suspension; Two years probation; $5000 fine; costs |
| Third Offense | One year suspension; One year probation | Revocation; $5000 fine; costs |
| (u) Section 455.227(1)(k), F.S.  Failing to perform any statutory or legal obligation placed on a licensee, if the obligation is not otherwise covered by this rule. |  | |
| First Offense | Reprimand | One year probation; Two years probation; $3000 fine; costs |
| Second Offense | Reprimand | Two year suspension; Two years probation; $5000 fine; Costs |
| Third Offense | Reprimand; $500 fine | Revocation; $5000 fine; costs |
| (v) Section 455.227(1)(l), F.S. Making a report that the licensee knows to be false, failing to file a required report, willfully impeding or obstructing another person to file a report. |  | |
| First Offense | $500 fine | Revocation; $5000 fine; costs |
| Second Offense | $1000 fine | Revocation; $5000 fine; costs |
| Third Offense | $2500 fine | Revocation; $5000 fine; costs |
| (w) Section 455.227(1)(m), F.S. Making deceptive, untrue, or fraudulent misrepresentations, trick or scheme, related to the practice or profession. |  | |
| First Offense | Reprimand; $500 fine | Revocation; $5000 fine; costs |
| Second Offense | One year probation; $1000 fine | Revocation; $5000 fine; costs |
| Third Offense | One year suspension; two years probation; $2500 fine | Revocation; $5000 fine; costs |

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| (x) Section 455.227(1)(p), F.S. Knowingly delegating or contracting  for the performance of professional  responsibilities to a person who is not qualified by training, experience, and authorization to perform them |  | |
| First Offense | Reprimand | One year suspension; $3000 fine; costs |
| Second Offense | Two years probation; $500 fine | Two years suspension; Two years probation; $5000 fine; costs |
| Third Offense | One year suspension; Two years probation; $2500 fine | Revocation; $5000 fine; costs |
| (y) Section 455.227(1)(r), F.S. Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceedings. |  | |
| First Offense | $1000 fine | Revocation; $5000 fine; costs |
| Second Offense | One year suspension; $2500 fine | Revocation; $5000 fine; costs |
| Third Offense | Two years suspension; $5000 fine | Revocation; $5000 fine; costs |
| (z) Section 455.227(1)(t), F.S. Failing to report in writing within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to a crime in any jurisdiction |  | |
| First Offense | Reprimand | $1000 fine; costs |
| Second Offense | $500 fine | Probation; $2500 fine; costs |
| Third Offense | Probation; $2500 fine | One year suspension; $5000 fine; costs |

(2) As used in this rule, the term “costs” means costs related to the investigation and prosecution of the case excluding costs associated with an attorney’s time.

(3) Where several violations occur in one case or several cases being considered together, the penalties shall be cumulative and consecutive.

(4) The provisions of this rule shall not be construed to limit the ability of the department to dispose disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.

## 61-20.011 Citations.

(1) Definitions. As used in this rule:

(a) “Citation” means an instrument which meets the requirements set forth in Section 455.224, F.S., and which is served upon a subject for the purpose of assessing a penalty in an amount established by this rule;

(b) “Subject” means the licensee, applicant, person, partnership, corporation, or other entity alleged to have committed a violation designated in this rule.

(2) Citations shall be issued for the first two occurences of the same violation only.

(3) The Department shall issue a citation including a penalty for each applicable statutory or rule violation set forth below. The verbal identification of violations are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included:

|  |  |  |  |
| --- | --- | --- | --- |
| **Statutory or Rule Violation** | **Description of Violation** | **Citation Amount**  **for First**  **Violation.** | **Citation Amount**  **for Second**  **Violation.** |
| (a) Section 468.432(1), F.S. | Holding one’s self out to the public as being able to manage a community association, or actively managing a community association with an inactive or delinquent license. | $125 | $250 |
| (b) Section 468.432(1), F.S. | Holding one’s self out to the public as being able to manage a community association, or actively managing a community association with a void license or without being licensed to do so. | $250 | $500 |
| (c) Section 468.432(2), F.S. | Operating a community association management firm or holding the community association management firm out to the public as being able to engage in the business of community association management with an inactive or delinquent license. | $125 | $250 |
| (d) Section 468.432(2), F.S. | Unless otherwise permitted in Chapter 468, Part VIII, F.S., performing community association management services in a community association management firm which does not have a license or is working on a void license. | $250 | $500 |
| (e) Section 468.432, F.S. | Employing a person as a community association manager with an inactive or delinquent license. | $125 | $250 |
| (f) Paragraph 61E14-  2.001(6)(b), F.A.C. | Failing to provide access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by the law. | $200 | $500 |
| (g) Paragraph 61E14-  2.001(6)(d), F.A.C. | Failing to maintain his or a management firm’s records, or the records of any applicable community association, to the extent charged with the responsibility of maintaining records, in accordance with the laws and documents requiring or governing the records. | $250 | $500 |

(4) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions of Chapter 119, F.S. The citation and complaint may be considered as aggravating circumstances in future disciplinary actions.

## 61-20.012 Mediation.

The following alleged violations may be resolved by mediation:

(1) Paragraph 61E14-2.001(2)(a), F.A.C., Failing to comply with the requirements of the governing documents by which the community association is created or operated.

(2) Paragraph 61E14-2.001(3)(a), F.A.C., Withholding possession of the association’s official records or original books, records, accounts, funds, or other property of a community association when requested by the association to deliver the same to the association upon reasonable notice.

(3) Paragraph 61E14-2.001(3)(b), F.A.C., Denying or delaying access to association official records to a person entitled to such by the law within the timeframe and under the procedures set out in Sections 718.111(12), 719.104(2), or 720.303(5), F.S.

(4) Paragraph 61E14-2.001(3)(d), F.A.C., Failing to maintain the records for a community association manager or management firm or the official records of any applicable association, as required by Sections 718.111(12), 719.104(2), or 720.303(4), F.S.

(5) Section 455.227(1)(m), F.S., Making deceptive, untrue, or fraudulent misrepresentations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

*Rulemaking Authority 468.4315(3), 455.2235 FS. Law Implemented 455.2235 FS. History–New 9-3-13, Amended 10-20-15.*

# Filings

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**61B-17.011 Delivery of documents via Alternative Media**

## 61B-17.001 Developer, Filing; Electronic Filing Required.

(1) (a) Except in the case of a reservation program, a developer of a residential condominium shall file with the Division one copy of each document required by Sections 718.502(5), 718.503, and 718.504, Florida Statutes. The filing shall occur prior to any offering of a condominium unit to the public. The developer shall submit with the filing a Developer/Condominium Filing Statement, [DBPR Form CO 6000-2](http://www.myfloridalicense.com/dbpr/lsc/documents/DBPRFormCO6000-2eff1016132.pdf), incorporated herein by reference and effective 10-16-13. When each subsequent phase is filed, the developer shall submit DBPR Form CO 6000-3, Filing Statement for Subsequent Phases, incorporated herein by reference and effective 12-23-02. A copy of both of these forms may be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

(b) In the case of a reservation program, a developer of a condominium shall file with the Division one copy of each document required by section 718.502(2), Florida Statutes, and shall obtain approval of the Division prior to any offering of a condominium unit to the public. In addition, a developer shall file, prior to offering, proof of the developer's ownership, contractual, or leasehold interest in the land upon which the condominium is to be developed. Such evidence must provide the address, or otherwise specify the location, of the land upon which the condominium is to be developed.

(2) For purposes of this rule the Division shall accept a signed written statement from the developer or the developer's attorney describing the developer's interest in the land upon which the condominium is to be developed. The signature of the developer or the developer's attorney constitutes a certificate that they have read the statement and, to the best of their knowledge information, and belief formed after reasonable inquiry, the statement accurately describes the developer's interest in the land.

(3) Upon recording the declaration of condominium pursuant to Section 718.104(2), Florida Statutes, or amendments adding phases pursuant to Section 718.403, Florida Statutes, the developer shall file the recording information with the Division within 120 working days on DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION, incorporated herein by reference and effective 8-15-05. A copy of this form may be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 blair Stone Road, Tallahassee, Florida 32399-1030. If the recorded documents have not already been filed, reviewed, and approved by the Division in accordance with subsection (1) of this rule and Sections 718.502(5), 718.503, and 718.504, Florida Statutes, prior to recording, then a complete copy of the recorded documents must be submitted with DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION. If the recorded documents have been previously filed, reviewed, and approved by the Division, then only the form need be filed.

(4) Frequently Asked Questions and Answers Sheet. Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-4, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET, incorporated herein by referenced and effective 12-23-02. A copy of both of this form may be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. The answers to the questions may be summary in nature, in which case the answers shall refer to identified portions of the condominium documents.

(5) Estimated Operating Budgets. Each condominium filing shall include an estimated operating budget conforming to the requirements of Rule 61B-22.003, Florida Administrative Code, in a single exhibit labeled “Estimated Operating Budget.”

(6) Once a developer has filed documents with the division for review pursuant to rule 61B-17.005, Florida Administrative Code, the devloper may offer units to the public. However, the developer shall not close on contracts until the documents are approved by the division pursuant to Rule 61B-17.005, Florida Administrative Code.

(7) Beginning on July 1, 2007, all new developer filings required or permitted by Chapter 61B-17, F.A.C., except as otherwise provided in this rule, shall be made by electronic filing with the division. This requirement applies to original filings, amendment filings, reservation filings, notices of intended conversion, and any other filing. No filing, except as provided in this rule, shall be submitted to the division in a paper format, except that filings submitted prior to July 1, 2007, in a paper format shall be allowed to be completed in a paper format.

(a) Format. All electronic filings shall be contained in a CD ROM format. No filings shall be submitted by email or Internet, dial up modem, floppy disc, or email attachment directed to the division. Within the CD ROM, the documents shall be presented in a portable document format (PDF) with each document labeled by name.

(b) Signatures. All documents required to contain an original signature, such as the fully executed escrow agreement, shall be reproduced electronically and shall be included on the CD ROM.

(c) Seals. All documents required to contain a seal such as an engineer’s seal, architect’s seal or notary public’s seal, shall be reproduced electronically in such a way as to make the seal evident, and shall be included on the CD ROM.

(d) Developer responses to notices of deficiency issued by the division shall be submitted electronically in PDF format either on a CD ROM, or as a PDF or WORD attachment to an email.

(e) Integrated text. Within 45 days following receipt of the division’s letter of approval of an electronic filing, the developer shall submit to the division a plain text integrated version of the filed documents in CD ROM format incorporating the initial filing with all changes necessitated by the division’s examination process. For example, the declaration shall be shown as a single document containing all required amendments within its text without underlining or strike-through format. The integrated filing CD ROM shall include a signed written statement by the developer’s attorney, or by the developer if not represented by an attorney, stating that the CD ROM contains an accurate integrated text of the filing. If there was no change in the filed documents necessitated by the division’s examination process, this subsection will not apply.

(f) Temporary Exemption. A developer may apply for a temporary hardship exemption if the developer experiences unanticipated technical difficulties that prevent the timely preparation and submission of any electronic filing. Such application shall be made in paper format and filed with the division. A developer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper documents within 14 days of the filing of the paper format document.

(g) Continuing Hardship Exemption. Until July 1, 2008, if a developer determines that the preparation of an electronic filing is unduly burdensome, unduly expensive, or is not technologically available, the developer may apply to the division for an automatic exemption from the requirement of an electronic filing in order to be permitted to file the documents in a paper format. Such automatic exemption shall only apply to the individual filing for which it is requested.

## 61B-17.0012 Declaration; Filing.

Any document required to be delivered to a prospective buyer or lessee pursuant to sections 718.503 or 718.504, Florida Statutes, which describes the developer's (or other person's) right to retain control of the association shall recite the provisions of section 718.301(1)(a) (g) Florida Statutes, regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the declaration for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in these statutory entitlements.

## 61B-17.002 Procedure for Filing.

(1) Each filing shall contain in the forepart a Table of Contents which lists the documents in the filing, in the order in which they appear.

(2) Each document shall be tabbed and labeled on the right side. Each label shall identify the document by appropriate word, phrase or abbreviation.

(3) Each filing shall be submitted in an expandable file folder approximately 14-3/4" by 9-1/2" in size. Filing statements and the Filing Checklist described in this rule shall be submitted with the documents and need not be submitted to purchasers.

(4) There shall be submitted with each filing a Filing Checklist which substantially conforms to DBPR Form CO 6000-7, Filing Checklist, incorporated herein by reference and effective 12-23-02. A copy of this form may be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Roadt, Tallahassee, Florida 32399-1030.

(5) A developer who contracts to sell a condominium parcel when the construction, furnishing and landscaping of the condominium property submitted to condominium ownership have not been substantially completed or renovation of property converted to condominium ownership has not been substantially completed in accordance with the plans, specifications or representations made by the developer, shall file with the Division a copy of a fully executed escrow agreement for contract deposits pursuant to Section 718.202, Florida Statutes. An escrow agreement is deemed to be fully executed by the inclusion of the dates of execution and the appropriate signatures. An escrow agreement is the agreement between the developer and the escrow agent establishing the escrow account.

(6) If the developer wishes to include in the filing certain documents that were previously reviewed and accepted by the Division, the filing shall be accompanied by DBPR Form CO 6000-5, Certificate of Identical Documents, incorporated herein by reference and effective 12-23-02 A copy of this form may be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

(7) Wherever possible, the division shall utilize electronic means of communication in its correspondence with the developer including e-mail and facsimile. If requested, the division shall utilize the means of communication preferred by the developer.

## 61B-17.003 Phase Condominium Filing.

(1) Every developer of a phase residential condominium shall file the initial phase with the Division. Said initial filing shall be submitted as required by Rule 61B-17.002, Florida Administrative code.

(2) “Subsequent Phase” means any phase not submitted to the condominium form of ownership with the recording of the original declaration of condominium. Subsequent phase(s) shall be filed as set forth below prior to offering any unit therein for sale or lease when the lease period is more than five years. Amendments to the declaration providing for subsequent phases and supporting documentation may be filed at the same time as the initial filing, or at a later time, but at any time all requirements of this rule shall be observed.

(3) In addition to filing as mentioned above, upon recording an amendment to the declaration submitting a subsequent phase to the condominium form of ownership, the developer shall file the recording information in accordance with subseciont 61B-17.001(4), Florida Administrative Code. Upon substantial completion of the construction of each subsequent phase, the developer shall file with the Division a survey prepared by a surveyor authorized to practice in the State of Florida with the appropriate certificate of the surveyor. Said certificate shall state that the construction of the improvements is substantially complete and is an accurate representation of the location and dimensions of the improvements. There shall be no filing fee for the filings described in this paragraph.

(4) When subsequent phase(s) are filed, the developer shall submit all amendments and all additional information, as outlined in Chapter 718, F.S. and these rules that pertain to said phase. Documents previously filed with the initial phase and which also pertain to the subsequent phase being filed, may be incorporated into the filing of subsequent phase(s) by reference thereto in the Filing Statement for Subsequent Phase(s).

(5) Subsequent phases shall be filed using the amendment procedures provided by Rule 61B-17.006, Florida Administrative Code. The filing fee due pursuant to Section 718.502(3), F.S. for each residential unit being added in the subsequent phase, shall accompany the filing. Each filing of a subsequent phase shall be submitted with the Filing Statement for Subsequent Phase(s).

(6) Filing for each subsequent phase shall contain a Table of Contents identifying the contents of the filing and their page numbers. The developer shall prepare the Table of Contents indicating the order in which the documents appear in the subsequent filing in order to facilitate review by the Division.

(7) The declaration for an initial phase shall include a description of each anticipated phase in the manner required by Section 718.403, Florida Statutes.

(a) The estimated operating budget filed with the Division in a phase condominium shall include a budget for the condominium completed through the phase being filed and a budget for the condominium as it would be upon completion of all phases, using estimated expenses as of the date of filing.

(b) The description of the general size of units pursuant to Section 718.403(2)(b), Florida Statutes, shall be stated in terms of approximate square footage per unit type.

(8) Any amendment to the declaration that adds subsequent phases shall state the resulting percentage or proportion of the ownership interest in the common elements appurtenant to each unit.

(9) After the original declaration of condominium has been recorded, any amendment changing the estimated completion dates of any phase or changing the items required to be included in the original declaration by section 718.403(2), Florida Statutes shall be approved by all unit owners.

(10) If the phase plan is being extended under Section 718.403(1), Florida Statutes, the phase amendment filing must include a recorded amendment with the required unit owner approval and either of the documents required under Section 718.403(1)(c), Florida Statutes, used to determine the time period of 10 years.

## 61B-17.005 Examination of Documents.

(1) “Initial Acceptance” means the division finds the filed documents that have been recorded acceptable as corrected, if any corrections are made following a notice of deficiency.

(2) “Final Acceptance” means

(a) the division finds the non-recorded documents acceptable as corrected, if any corrections are made following a notice of deficiency, or

(b) the developer submitted recorded amendment(s) to previously recorded documents that incorporate corrections made after a notice of deficiency.

(3) “Record” or “recorded” means a document that has been recorded in the official records of the county where the condominium is located. The copy of the recorded document(s) provided to the division must bear the county clerk’s official stamp or seal with the recording date and location in the public records by book and page. A photocopy of the recorded document is acceptable as long as the recording information is clearly legible.

(4) “Withdrawn” means the filing has been withdrawn from the review process.

(5) Upon receipt of a filing, the division will determine whether the filing is in proper form. The filing is considered to be in proper form when:

(a) Tabbing. All forms and documents, properly completed, tabbed, labeled and assembled in accordance with these rules, are included;

(b) The Condominium Filing Statement has been completed properly; and

(c) The correct filing fee has been received by the division.

(6) If the division does not give notice within (10) days after receipt of the filing, the filing is presumed to be in proper form for purposes of the examination process. If the filing is not considered to be in proper form, the division shall notify the developer or its agent of the unacceptability of the filing and the reasons therefor.

(7) (a) The division will examine the content of the filing to determine its sufficiency under the Condominium Act and these rules. Within 45 days from receipt of the initial filing, the division shall notify the developer or its agent by mail of any deficiencies or that the filing is accepted. If the notice is not given within 45 days from receipt of the filing, the filing is presumed to be accepted. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(b) Division acceptance of a filing pursuant to these rules shall automatically expire if, within 24 months after the date of the division’s acceptance letter, the developer has not, pursuant to Section 718.104, F.S., created the condominium indicated in the accepted filing, or in the case of a phase condominium, has not created the phase or phases pertaining to that filing. However, division acceptance of a filing will not expire if, within 30 days before or after the expiration of the 24-month period referenced above, the developer in writing requests to extend the filing acceptance for an additional 24-month period. Additional requests to extend the acceptance may be filed within 30 days before or after the expiration of any requested extension. There is no fee associated with the timely filing of a request to extend the division’s acceptance of a developer filing. Accompanying each request for extension shall be a statement signed by the developer or its duly authorized representative affirming that as of the date the request for extension is sent to the division, all changes to the accepted filing occasioned by changes in Chapter 718, F.S. The Condominium Act, and the rules of the division, have been effectuated. The developer, when the filing acceptance expires pursuant to this rule, shall immediately and in writing notify all purchasers under contract of the expiration of acceptance of the filed documents and shall offer immediate refunds of any deposits collected, as well as interest as appropriate, under the contracts. If a filing acceptance expires, the developer, when subject to the provisions of Section 718.202, F.S., shall, within 45 days of such expiration, provide to the division a complete accounting of any deposits collected pursuant to the accepted documents. A complete refiling of the documents pursuant to the requirements of Chapter 718, F.S., and these rules, including the payment of filing fees, shall be required prior to any additional offerings.

(c) As utilized in this rule, the phrase “complete accounting” refers to a list of the names and addresses of all purchasers under contract, the date each contract was entered into, the amount of each deposit, the date and amount of each disbursement from the escrow account, and a copy of all notifications to purchasers under contract required by this rule.

(8) The developer shall have 45 days from the date of the division’s notification of deficiencies in the filing to correct any deficiencies noted by the division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The division shall, however, grant an extension of the 45-day period upon written request received by the division within the 45-day period, which request shall set forth the reasons for the request. If deficiencies are not corrected within the 45-day period and an extension of time is not timely requested, the division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) 45-day extensions. The division shall notify the developer of said rejection by a final order. Prior to the issuance of a final order, the division shall notify the developer of the pending action and shall provide an opportunity for the developer to respond in writing or at a hearing if requested. If a filing is rejected, the developer, when subject to the requirements of Section 718.202, F.S., shall, within 45 days of issuance of the final order of rejection, provide the division with a complete accounting of any deposits collected pursuant to the rejected documents. The developer shall also, immediately and in writing, notify all purchasers under contract of the rejection and shall offer immediate refund of deposits collected, as well as interest as appropriate, under the contracts. A complete refiling of the documents pursuant to the requirements of Chapter 718, F.S., and these rules, including the payment of filing fees, will be required prior to any additional offerings.

(9) The Division shall notify the developer or its agent within 30 days from the receipt of documents correcting noted deficiencies of the acceptability of the corrections. If the notice is not given within 30 days, the documents will be considered accepted for filing purposes.

(10) In no event shall the division’s acceptance of the filing be construed as a division endorsement or approval of the offering and no document or offering material shall indicate that the Division has in any manner endorsed or approved the offering.

(11) If a filing is received without the correct filing fee, the division’s review period will not commence and the filing will not be reviewed. If the correct filing fee is not submitted within one week after the developer receives the division’s notification, the filing will be returned, no further offers may be made, and all purchasers under contract shall be entitled to a refund of any deposit and interest earned thereon.

(12) If a filing contains previously recorded documents that require corrections, a recorded amendment incorporating these corrections must be filed within 30 days of the division issuing an Initial Acceptance. If the recorded amendment is not submitted or if the filing has not been withdrawn within the 30-day period, the division will reject the filing under this rule, and no further offers may be made utilizing the rejected documents.

## 61B-17.006 Filing and Examination of Amendments to Documents

(1) “Amendment” means

(a) any change to documents that have previously been filed with and accepted by the division, and

(b) any change to a document(s) recorded in the public records, whether the change technical or substantive, regardless of the procedure by which the change is made. Developers shall file such changes as amendments, regardless of the nature of the changes, except as provided in paragraph (6)(b).

(2) “Initial Acceptance” means the division finds the filed documents that have been recorded acceptable as corrected, if any corrections are made following a notice of deficiency.

(3) “Final Acceptance” means:

(a) The division finds the non-recorded documents acceptable as corrected, if any corrections are made following a notice of deficiency, or

(b) The developer submitted recorded amendment(s) to previously recorded documents that incorporate corrections made after a notice of deficiency.

(4) “Record” or recorded” means a document that has been recorded in the official records of the county where the condominium is located. The copy of the recorded document(s) provided to the division must bear the county clerk’s official stamp or seal with the recording date and location in the public records by book and page. A photocopy of the recorded document is acceptable as long as the recording information is clearly legible.

(5) “Withdrawn” means the filing has been withdrawn from the review process.

(6) (a) Every developer of a condominium who holds a unit for sale in a condominium shall submit to the Division any amendments in documents or items on file with the Division and deliver to the purchaser pursuant to Rule 61B-18.001, F.A.C., all amendments prior to closing, but in no event, later than 10 days after the amendment is accepted by the division.

(b) No changes shall be made to the form purchase contract approved by the Division without first filing and obtaining acceptance of such changes from the Division. However, in an individual unit sale transaction using the form purchase contract approved by the Division, a change to the purchase contract or a modification made on the purchase contract or the attachment of a rider or addendum to such contract is not required to be filed with the Division provided that such change, modification, rider or addendum does not contain either a waiver or reduction of purchaser’s rights under Chapter 718, Florida Statutes, or a reduction of a developer’s duties under Chapter 718, Florida Statutes, and the rules promulgated thereunder, and is not otherwise inconsistent with Chapter 718, Florida Statutes. A developer is not required to deliver such change, modification, rider or addendum to any purchaser other than the purchaser whose contract has been modified by such change, modification, rider or addendum.

(c) Upon filing an amendment or amendments to documents or items that have been accepted by the Division, the developer shall pay to the Division a filing fee of $100 per filing. A developer may include within each filing, multiple amendments relating to a single condominium in which case a filing fee of only $100 shall be charged. However, there shall be no charge for filing documents that do not change an accepted condominium filing, such as a Certificate of Incorporation, or a change to a notice of intended conversion, reservation program, or notice of termination of condominium.

(d) The following amendments do not materially alter or modify the offering within the meaning of Section 718.503, Florida Statutes. However, nothing herein shall preclude a developer from arguing that other amendments not expressly described herein do not materially alter or modify the offering within the meaning of Section 718.503, Florida Statutes.

1. Any grammatical or typographical correction, or change in presentation or format that does not affect the meaning of any provision of the accepted offering documents and does not violate conspicuous type or other disclosure requirements contained in Chapter 718, Florida Statutes;

2. Any substitution of an executed, filed or recorded copy of a document for the otherwise identical unexecuted, unfiled or unrecorded copy of the document contained in the accepted offering documents (with regard to the inclusion of a recorded phase amendment pursuant to Sections 718.110 and 718.403, Florida Statutes, substitution shall be permitted if the form of phase amendment accepted with the initial registration is utilized for the phase amendment and the only modifications are ministerial in nature and designed to complete the amendment instrument as originally contemplated);

3. Inclusion of updated information such as identification or description of:

a. The current officers and directors of the association;

b. The name or ownership of the developer so long as the business organization of the developer still exists;

c. Phases added to the condominium in accordance with the phasing plan, pursuant to Section 718.403, Florida Statutes, and accepted by the Division;

d. Any action taken pursuant to any previously disclosed reserved right not arising under Section 718.110(4) or 718.403(2), Florida Statutes;

e. Disclosure of improvements for which construction has been completed and which improvements were either previously proposed or not complete;

f. Modification of the applicable budgets to incorporate submission of additional phases committed to the condominium; or

g. Elimination of disclosures required by Section 718.504(12), Florida Statutes, following transfer of control of the association pursuant to Section 718.301, Florida Statutes.

4. Any inclusion of information that will have application only to purchasers not currently under contract;

5. Modifications related to an increase in closing costs for prospective purchasers;

6. Modifications related to a change in the escrow agent or changes in the provision of title insurance; or

7. Modification of a master escrow agreement to include additional condominium projects or to remove condominium projects for which the developer is no longer offering units for sale.

(7) The developer shall submit with the amendments the following information on a separate cover sheet:

(a) Name and physical location of the condominium to which amendments apply;

(b) Developer’s name and mailing address;

(c) Division Identification Number;

(d) Identification of document to which amendment applies;

(e) Book, page number and county where recorded, if applicable;

(f) A statement summarizing each amendment; and,

(g) Identification of all new and deleted language. This requirement may be accomplished by providing a coded copy of the new documents identifying new language with underlining and striking through material to be deleted from the documents.

(8) The Division may require that documents or items be revised to include amendments if said revision is deemed necessary by the Division for full and adequate disclosure.

(9) Upon receipt of an amendment, the Division will examine the material to determine its sufficiency under the Condominium Act and these rules. Within 35 days from receipt of the documents, the Division shall notify the developer or its agent by mail of any deficiencies in the content or that the amendment is proper for filing purposes. If the notice is not given within 35 days from receipt of the documents, the amendment is presumed to be properly filed. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(10) The developer shall have 20 days from the date of the Division’s notification of deficiencies in the amended material to correct the deficiencies noted by the Division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The Division shall, however, grant an extension of the 20-day period upon written request of the developer. If deficiencies are not corrected within the 20-day period and an extension of time has not been granted by the Division, the Division shall reject the amendment and no further offers shall be made utilizing the rejected documents.

(11) Within 20 days after the receipt of documents responding to deficiencies noted by the Division, the Division shall notify the developer or its agent as to the acceptability of the corrected documents. If the notice is not given within 20 days, the amended documents will be considered accepted.

(12) (a) After the filing is accepted, a developer shall not alter the condominium type through these amendment procedures. For purposes of this rule, the condominium types utilized by the Division are as follows:

1. Standard Condominium refers to a single condominium operating under a single condominium association the development of which is completed in one stage of construction, as opposed to a phase condominium;

2. Land Condominium refers to a condominium in which the residential units of the real property being submitted to the condominium form of ownership consist of land only;

3. Planned Unit Development refers to a condominium which is included in or located within a real property development project that contains or will contain other types of real property ownership such as townhouses or single family homes;

4. Conversion Condominium refers to a condominium development in which currently existing real property improvements are being converted to residential condominium ownership;

5. Phase Condominium means a condominium developed pursuant to Section 718.403, Florida Statutes; and

6. Multicondominium means a condominium that is part of or included within a development which contains more than one condominium operated by a single association.

(b) In order to change the condominium type of an accepted condominium filing, for example changing from a standard condominium plan to a phase plan, conversion, or planned unit development, or any combination thereof, the developer must file anew with the Division pursuant to Section 718.502, Florida Statutes, and Rule 61B-17.005, F.A.C.

(13) In no event shall the Division’s acceptance of an amendment be construed as endorsement or approval of the amendment by the Division. No documents or offering materials shall indicate the Division has in any manner endorsed or approved the materials.

(14) If an amendment filing contains recorded documents that require corrections, a recorded amendment incorporating these corrections must be filed within 30 days of the division issuing an Initial Acceptance. If the recorded amendment is not submitted or if the filing has not been withdrawn within the 30-day period, the division will reject the filing under this rule, and no further offers may be made utilizing the rejected documents.

## 61B-17.009 Alternative Assurances

(1) This rule governs alternative assurances provided for in Section 718.202, Florida Statutes. An alternative assurance must be approved by the Division Director prior to the use by a Developer of the sales deposits intended to be assured. Pending approval, sales deposit funds to be assured by the alternative assurance must be placed in escrow.

(2) Procedure for Filing: A proposed alternative assurance filing should be submitted under cover separate from any condominium filing. The alternative assurance filing must include:

(a) A COVER LETTER explaining the details of the alternative assurance. The letter must include the name and address of the condominium for which the assurance is intended.

(b) A COPY OF THE INSTRUMENT evidencing the proposed alternative assurance, and

(c) A copy of the purchase deposit escrow agreement. The escrow agreement shall contain the following minimum provisions:

1. The developer and escrow agent must have the Division Director’s written approval of the use of an assurance prior to its use by the developer.

2. The amount of any assurance plus the amount of any sales deposits in escrow must at all times equal or exceed the amount of sales deposits required to be assured by Section 718.202, Florida Statutes. It is the developer's duty to ensure that the assurances are adequate.

3. The developer shall provide the escrow agent with a monthly report of the amount of funds currently assured. The developer shall provide the Division with a quarterly report of the amount of funds currently assured.

4. The developer shall ensure that the Division Director, escrow agent and the developer receive at least a 30-day notice prior to the cancellation of any assurance.

5. At least 15 days prior to the expiration of any assurance posted in lieu of the escrow requirements of Section 718.202, Florida Statutes, the developer must place funds assured by the instrument into escrow.

(3) Types of assurances. As provided by Section 718.202(1), Florida Statutes, the Division Director is authorized to accept the following types of assurances:

(a) A surety bond issued by a company authorized and licensed to issue surety bonds in Florida;

(b) An irrevocable letter of credit issued by a financial institution as defined by Section 655.005, Florida Statutes, and located in Florida; or

(c) A cash bond held by the escrow agent.

(4) Minimum terms and conditions. The assurance instrument shall include the following minimum terms and conditions:

(a) The escrow agent has authority to draw on the assurance and treat the drawn funds as if they were escrowed funds;

(b) The Division Director has authority to draw on the assurance when circumstances warrant a draw and the escrow agent fails to do so;

(c) The original expiration date of any letter of credit or surety bond shall be not less than one year from the date of issuance; and

(d) If the assurance is automatically renewable the issuer shall give the escrow agent and the Division Director not less than 30 days notice of cancellation.

(5) Purchaser Refunds: During the period in which any letter of credit is in effect, if any purchaser is entitled to a refund as provided in Section 718.202(1), Florida Statutes, the refund must be made to the purchaser within thirty (30) days after the purchaser’s request.

## 61B-17.011 Delivery of Documents via Alternative Media.

(1) If the developer wishes to use alternative media (for example, CD-ROM) for delivery of documents to purchasers, the developer must give the purchaser the option of receiving paper documents or alternative media documents. The purchaser’s choice of delivery method shall be set forth in writing on a form called the “alternative media disclosure statement.” The form “alternative media disclosure statement” shall be filed with the Division for review and approval along with other required documents. The form shall:

(a) Be separate from other documents delivered;

(b) Disclose the system requirements (for example, operating system, memory, hard drive, processor speed, printer requirements, software) necessary to view the alternative media documents;

(c) State that the purchaser should not select alternative media unless the purchaser will have the means to read the documents before the expiration of the 15-day cancellation period. The alternative media disclosure statement shall be listed on the form receipt for documents in the manner prescribed in DBPR Form CO 6000-6, Receipt for Condominium Documents, incorporated herein by reference and effective 8-26-04 and as required in subsection 61B-18.004(3), F.A.C. A copy of this form can be obtained by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399.1030. If a portion, but not all, of the documents are delivered through the use of alternative media, the developer shall identify in the prospectus table of contents and in the receipt for condominium documents which documents are being delivered via alternative media and which documents are being delivered in paper form.

(2) Prior to delivery of documents to a purchaser via alternative media, the developer must submit to the Division a sample copy of the alternative media proposed for use by the developer together with an executed certificate, using the form prescribed in DBPR Form [CO 6000-5, Certificate of Identical Documents](http://www.myfloridalicense.com/dbpr/lsc/documents/DBPRFormCO6000-5eff122302.pdf), referenced in Rule 61B-17.002 , F.A.C., certifying that the portion of the documents delivered via alternative media is identical in form and substance to the corresponding portion of the documents reviewed and accepted by the Division.

(3) In the event that the developer amends the documents and wishes to deliver the amendment to purchasers via alternative media, the provisions of this rule shall apply.

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# Documents

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## 61B-18.001 Contracts.

(1) For the purpose of this rule, the following definitions shall apply:

(a) Closing on a contract for the sale shall mean conveyance of the unit as evidenced by the delivery of the deed transferring title to the purchaser.

(b) Closing on a contract for the lease of a unit shall mean execution of the lease by all parties.

(2) Prior to closing, a contract for the sale of a unit or a contract for the lease of a unit for an unexpired term of more than five years is voidable by the purchaser or lessee within fifteen days after both of the following have occurred:

(a) The contract has been executed by the buyer, and

(b) The buyer has signed the receipt for documents required by Rule 61B-18.004, F.A.C.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-17.006, Florida Administrative Code, the developer shall provide to those who have not closed a written statement that if any of the above-referenced amendments materially alter or modify the offering in a manner which is adverse to the purchaser, the purchaser or lessee shall have a 15-day voidability period.

(4) At the time of closing a sale or lease for a period of more than 5 years, the developer shall notify the purchaser or lessee in writing stating that the developer has provided the purchaser or lessee all amendments to items delivered to the purchaser or lessee pursuant to Chapter 718, Florida Statutes.

(5) After the buyer or lessee for a term of more than 5 years has received all of the items required by Chapter 718, Florida Statutes and these rules of the Division as evidenced by the signed Receipt of Documents, he may extend the time of closing for a period not to exceed 15 days if closing was scheduled less than 15 days after execution of contract and receipt of the documents.

(6) In order to void the contract, the buyer or lessee shall give written notice to the developer named in the contract to cancel the contract.

(7) If a contract is properly terminated by the buyer or lessee, as described in this rule, the developer shall refund to the proposed buyer or lessee any deposit made, together with any interest in accordance with section 718.202, Florida Statutes.

(8) In the sale or lease of a unit which has been occupied by someone other than the buyer, a statement that the unit has been occupied must be included in the contract.

(9) If a contract is for the lease of a unit for a term of more than 5 years, the contract shall include as an exhibit a copy of the proposed lease.

(10) Only contracts conforming to the requirements of this rule and the provisions of section 718.503, Florida Statutes, may be utilized by a developer in connection with the offering and sale, or lease for a term of more than five years, of a unit pursuant to the requirements of section 718.502, Florida Statutes. A contract shall not limit the purchaser's remedy, for the developer's willful non-performance under the contract, to a return of the purchaser's deposit or a return of the purchaser's deposit plus interest.

## 61B-18.002 Plot Plans and Floor Plans.

(1) Every plot plan shall be a legible, scaled drafted map and shall indicate the following:

(a) Name of the condominium;

(b) Scale, date, and north arrow;

(c) Ingress and egress;

(d) The use and approximate size, location, and height of all existing and/or proposed buildings and other structures;

(e) Common areas and elements;

(f) Limited common elements;

(g) Easements;

(h) Parking areas;

(i) The party who prepared the map.

(2) Each item depicted on the plot plan shall be identified as existing or proposed.

(3) Every filing shall include, if applicable, a floor plan for each type of unit. For the purposes of disclosure provided to purchasers and filed with the Division pursuant to sections 718.502, 718.503, and 718.504, Florida Statutes, the floor plan shall be legible, and shall, at a minimum, show:

(a) The perimeter boundaries of the unit and the approximate dimensions of such boundaries.

(b) The walls separating each room within the unit and the approximate dimensions of each room.

(c) The approximate location of all doorways.

(d) The dimension requirements of this rule may be achieved with a plan drawn to scale with the scale depicted on the plan.

## 61B-18.004 Receipt for Condominium Documents.

(1) Every developer who enters into a contract for the sale of a residential condominium unit or for the lease of a residential condominium unit for a lease period of more than five years shall obtain from the purchaser or lessee a receipt acknowledging that he has been provided the required documents by the developer.

(2) The developer shall itemize all items which are applicable and are to be delivered to the purchaser. Those items to be delivered shall be those documents required by the Division for filing during the examination period.

(3) Said receipt shall be in substantially the form prescribed by DBPR Form [CO 6000-6. Receipt for Condominium Documents](http://www.myfloridalicense.com/dbpr/search_results.html?cx=005461694224298471732%3A8iaabfwlcno&cof=FORID%3A11&q=CO+6000-6.+Receipt+for+Condominium+Documents&sa=Search), as referenced in Rule 61B-15.0012, F.A.C., and shall include but not be limited to the items listed. A copy of the receipt form shall be submitted to the Division at the time of filing. The developer shall provide the purchaser or lessee with a copy of the signed receipt, upon request.

(4) The developer should retain a copy of the signed receipt for a period of five years after the date of closing of the transaction. Said receipt should be maintained in the official business records of the developer.

## 61B-18.0051 Declarations.

A declaration of condominium in which percentage of ownership is not based upon an equal fractional basis shall include the square footage within each unit or unit type based on the perimetrical boundaries ascribed to each unit or unit type or the dimensions of each unit as elsewhere provided in the declaration of condominium or the survey or graphical description, as well as the total square footage of all units combined.

## 61B-18.007 Developer Exemptions Under Condominium Documents.

Unless otherwise expressly authorized by Chapter 718, Florida Statutes, no provision in any declaration, articles of incorporation or bylaws recorded in the public records subsequent to the effective date of this rule shall partially or totally exempt the developer, transferees or designees of the developer, or units owned by the developer or its designees from the requirements of any such document which apply to all other owners or units and which pertain to any of the following:

(1) requirements that leases or lessees be approved by the association;

(2) restrictions on the presence of pets;

(3) restrictions on occupancy of units based on age;

(4) restrictions on the type of vehicles allowed to park on condominium property or association property; however, the developer and its designees shall have the right to be exempt from any such parking restriction if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of units, if such exemption is provided in the condominium documents.

## 61B-18.008 Disclosure of Developer's Rental Program.

(1) In determining whether a developer's plan includes a program of leasing, and thus requires disclosure pursuant to section 718.504(10), Florida Statutes, it shall be relevant, although not dispositive, whether and the extent to which:

(a) the developer has advertised the availability of its units for rent;

(b) the developer has listed any of its units for rent with a broker or salesman;

(c) the developer has designated on internal marketing charts, memoranda or lists certain units as for sale and other units as for rent; and,

(d) the developer-owned units are available for rent but not for purchase.

(2) A developer shall be presumed not to have a program of leasing requiring disclosure pursuant to the above statute if the developer offers no more than 7 leases within a period of 1 year in a condominium comprised of 70 or more units. In condominiums containing fewer than 70 units, the foregoing presumption shall exist if, in any 1 year period, the developer offers 5 or fewer such leases.

(3) In describing a program of leasing in a prospectus for a residential condominium, the developer shall identify:

(a) the total number of units to be leased;

(b) the specific units to be leased;

(c) the provisions and duration of the proposed leases; and

(d) the estimated length of time in which the developer plans to lease units rather than sell them or lease units and sell them subject to such leases.

(4) Where a developer has no current intention of engaging in a program of leasing at the time the prospectus is filed with the Division and therefore does not make the disclosures required by section 718.504(10), Florida Statutes, the developer may not subsequently engage in a program of leasing until the developer:

(a) files an amendment with the Division, pursuant to rule 61B-17.006, Florida Administrative Code, fully disclosing the information noted above; and

(b) provides a copy of the amendment to the association and to every unit owner.

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# DEVELOPER OBLIGATIONS AND RESOLUTION GUIDELINES FOR CONDOMINIUM DEVELOPERS

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## 61B-20.003 Escrow Agents and Escrow Agreements.

(1) In determining whether an escrow agent, identified in an escrow agreement filed with the division, is independent of a condominium developer, the division, when it has reason to question the independence of the escrow agent, shall consider and require reasonable disclosure of factors, including any familial relationship or common financial interest between the developer and the escrow agent, which reasonably relate to the developer's ability to directly or indirectly control or influence the escrow agent in the performance of his statutory duties. Additionally, when the division has reason to question the independence of the escrow agent, the division shall require a statement from the escrow agent attesting to the agent's independence and affirming that there is no conflict between the agent's duties as escrow agent and in any other capacity in which the agent serves. One who is otherwise qualified to serve as escrow agent, however, will not be precluded from serving in such a capacity solely because:

(a) The escrow agent performs routine banking or financial services for the developer; or

(b) A non-employee attorney-client relationship exists between the developer and the escrow agent, including representation of the developer in legal matters relating to the condominium for which he serves as escrow agent, unless and until the obligations as attorney and as escrow agent result in a conflict of interest or require a violation of the respective legal duties attendant to such positions; or,

(c) The escrow agent provides brokerage services on behalf of the developer, except that such an escrow agent is not independent of the developer with respect to any deposits or payments received by the escrow agent pursuant to any sales, rental or lease agreements for which the escrow agent has also served as the developer's sales, rental, or leasing agent.

(2) At any time that the Division concludes that an escrow agent is not independent of a developer, it shall cite this as a deficiency in the developer's condominium reservation filing or residential condominium prospectus and shall order the developer to immediately obtain an independent escrow agent and have all escrow funds turned over to the new agent.

(3) If the developer is required to have an escrow agreement by the provisions of section 718.202, Florida Statutes, in connection with a filing made pursuant to paragraph 61B-17.001(2)(a), Florida Administrative Code, the escrow agreement shall be separate from any escrow agreement used by the developer as part of a reservation filing pursuant to paragraph 61B-17.001(1)(b), Florida Administrative Code.

## 61B-20.004 Definitions and Purpose.

(1) Definitions. For the purpose of rules 61B-20.004, 61B-20.005 and 61B-20.006, F.A.C., the following definitions shall apply:

(a) "Accepted Complaint" means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to section 718.501(1), F.S.

(b) "Affirmative or corrective action" means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) "Bad check" means any worthless check, draft, or order of payment identified under section 68.065, F.S.

(d) "Developer," for purposes of these guidelines, shall have the same meaning as stated in section 718.103(16), F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of chapter 718, F.S., and the division's administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) The division shall apply these guidelines against the developer pursuant to the division's authority in section 718.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines, regardless of whether turnover has occurred. The developer shall not pass the cost of affirmative or corrective action or penalties on to the unit owners.

(4) These penalty guidelines are promulgated pursuant to the division's authority in section 718.501(1)(d), (f), and (k), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to section 718.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., are necessary to explicate the division's education and enforcement policy. These rules are not intended to cover, or be applied to, willful and knowing violations of chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of section 718.501(1)(d)4., Florida Statutes. These rules are not intended to cover, or be applied to, violations of chapter 718, F.S., or the administrative rules by a unit owner controlled association. Such violation shall be strictly governed by the provisions of chapter 61B-21, F.A.C.

## 61B-20.005 Educational Resolution.

An initial accepted complaint, directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 15 business days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution.

## 61B-20.006 Enforcement Resolution and Civil Penalties.

(1) The division will seek compliance through an enforcement resolution for repeated minor violations, for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. These guidelines list aggravating and mitigating factors that will reduce or increase the penalty amounts within the specified range and those circumstances that justify a departure from range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of $5,000. The guidelines in this rule section are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule section contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by a developer. The absence of any violation from this rule section shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule section, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule section; and

2. The mitigating or aggravating factors listed in this rule section.

(b) Violations Included. This rule section applies to all statutory and rule violations subject to a penalty authorized by chapter 718, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order a developer to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater.

(d) Description of Violations. Although the violations in rule 61B-20.006, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in rule 61B-20.006, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule section.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule section. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.

2. Financial loss to parties or persons affected by the violation.

3. Financial gain to parties or persons who perpetrated the violation.

4. The same violation was committed after a Notice of Deficiency was issued.

5. The disciplinary history of the developer, including such action resulting in settlement or pending resolution.

6. The violation caused substantial harm, or has the potential to cause substantial harm to condominium residents or other persons.

7. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after the developer received the division's written notifications of the violation.

8. The violation had occurred for a long period of time.

9. The violation was repeated within a short period of time.

10. The developer impeded the division's investigation or authority.

11. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Reliance on written professional or expert counsel and advice.

2. Acts of God or nature.

3. The violation caused no harm to condominium residents or other persons.

4. The developer took affirmative or corrective action before it received the division's written notification of the violation.

5. The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.

6. The developer cooperated with the division during the investigation.

7. The investigation was concluded through consent proceedings.

(4) The provisions of this rule section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under chapter 718, F.S.

(6) In addition to the penalties established in this rule section, the division reserves the right to seek to recover any other costs, penalties, attorney fees, court costs, service fees, collections costs, and damages allowed by law.

(a) Cost of Onsite Reviews and Investigations. Expenses charged pursuant to this subsection are computed in the manner prescribed by Section 112.061, F.S. The division will seek to collect from a developer, association, officer, director, bulk buyer, or bulk assignee the actual cost of an onsite review or investigation under Section 781.501(1)(d)8., F.S. as verified by the agency travel reimbursement approved under Section 112.061, F.S.

(b) Additionally, the division reserves the right to seek to recover any costs, penalties, attorney fees, court costs, service fees, collection costs, and damages imposed by law if a developer submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between $1 and $5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater. Finally, in no event shall a penalty of more than $5,000 be imposed for a single violation. The following are identified as minor violations:

|  |  |  |
| --- | --- | --- |
| CATEGORY | STATUTE OR RULE CITE | DESCRIPTION OF CONDUCT/VIOLATION |
| BOARD | 718.110(1)(B), F.S.  718.112(2)(h)2., F.S. | Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc. |
| Board | 718.111(1)(a), F.S. | Failure to maintain corporate status |
| Board | 718.111(1)(b), F.S. | Improper use of secret ballot, or use of proxy, by board members at a board meeting. |
| Board | 718.112(2)(a)2., F.S. | Failure to provide a timely or substantive response to a written inquiry received by certified mail. |
| Board | 718.112(2)(b)1., F.S. | Improper quorum at unit owner meeting. |
| Board | 718.112(2)(b)2., F.S. | Failure of proxy to contain required elements. |
| Board | 718.112(2)(c), F.S.  61B-23.002(9), F.A.C. | Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes. |
| Board | 718.112(2)(d)2., F.S. | Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings. |
| Board | 718.112(2)(d)4., F.S. | Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized. |
| Board | 718.112(2)(i), F.S. | Failure to have the authority in the documents when levying transfer fees or security deposits. |
| Board | 718.113(5), F.S. | Failure to comply with hurricane shutter requirements. |
| Board | 718.116(3), F.S. | Failure to have the authority in the documents when levying late fees. |
| Board | 718.3026(1), F.S. | Failure to obtain competitive bids on contracts that exceed five percent of the association's budget. |
| Board | 718.303(3), F.S. | Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines. |
| Board | 61B-23.001(3), F.A.C. | Failure to allow unit owners to attend board or committee meetings. |
| Board | 61B-23.001(4), F.A.C. | Failure to provide a speaker phone for board or committee meetings held by teleconference. |
| Board | 61B-23.001(6), F.A.C. | Failure to employ a licensed manager when licensure is required. |
| Board | 61B-23.002(11), F.A.C. | Failure to permit a unit owner to tape record or video tape meetings. |
| Board | 61B-23.0021(13), F.A.C. | Failure to fill vacancy properly. |
| Budgets | 718.112(2)(e), F.S. | Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget. |
| Budgets | 718.112(2)(f)1., F.S. 718.504(20), F.S. | Failure to include applicable line items in proposed budget. |
| Budgets | 718.112(2)(f)1., F.S.  61B-22.003(5), F.A.C. | Failure to show limited common element expenses in proposed budget. |
| Budgets | 61B-22.003(1)(b), F.A.C. | Failure to disclose the beginning and ending dates of the period covered by the proposed budget. |
| Budgets | 61B-22.003(1)(c), F.A.C. | Failure to disclose periodic assessments for each unit type in proposed budget. |
| Budgets | 61B-22.003(1)(d), F.A.C. | Failure to propose full reserve funding in proposed budget. |
| Budgets | 61B-22.003(1)(e), (f), F.A.C.  61B-22.005(1), F.A.C. | Failure to provide for funding of one or more reserve fund categories in the proposed budget. |

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| Budgets | 61B-22.003(4)(a), F.A.C. | Failure to provide the required separate proposed budget for each condominium operated by the association. |
| Elections | 718.112(2)(d)3., F.S. 61B-23.0021(3), F.A.C. | Improper nomination procedures in election. |
| Elections | 718.112(2)(d)3., F.S. 61B-23.0021(5), F.A.C. | Including a candidate who did not provide timely notice of candidacy. |
| Elections | 61B-23.0021(6), F.A.C. | Failure to provide candidate a receipt for written notice of intent to be a candidate. |
| Elections | 61B-23.0021(8), (10), F.A.C. | Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope. |
| Elections | 61B-23.0021(10)(c), F.A.C. | Failure to timely hold runoff election. |
| Records | 718.111(1)(b), F.S. | Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting. |
| Records | 718.111(12)(a)2., F.S. | Failure to maintain a copy of recorded declaration and amendments. |
| Records | 718.111(12)(a)3., F.S. | Failure to maintain a copy of recorded bylaws and amendments. |
| Records | 718.111(12)(a)4., F.S. | Failure to maintain a certified copy of articles of incorporation and amendments. |
| Records | 718.111(12)(a)7., F.S. | Failure to maintain a current unit owner roster. Failure of roster to include all elements. |
| Records | 718.111(12)(a)14., F.S. 61B-23.002(5)(a), F.A.C. | Failure to maintain or annually update the question and answer sheet. |
| Records | 718.111(12)(a)15., F.S. | Failure to maintain other association records related to the operation of the association. |
| Records | 718.111(12)(b), (c), F.S. | Failure to provide access to records. |
| Records | 61B-22.003(3), F.A.C. | Failure of budget meeting minutes to reflect adoption of the proposed budget. |

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| Records | 61B-23.003(6), F.A.C. | Failure to maintain a copy of the receipt for delivery of association records upon transfer of control. |
| Reporting | 718.111(13), F.S. 61B-22.006(7)(a), F.A.C. | Failure to timely provide the annual financial report. |
| Reporting | 61B-22.006(3)(a)5., F.A.C. | Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made. |
| Reporting | 61B-22.006(3)(b), (c), F.A.C. | Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements. |
| Reporting | 61B-22.006(3)(d), F.A.C. | Improper disclosure in the year-end financial statements of revenues and expenses related to limited common elements. |
| Reporting | 61B-22.006(4), F.A.C. | Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year-end financial statements. |
| Reporting | 61B-22.006(5), F.A.C. | Failure to show developer assessments separately from non-developer owners in the year-end financial statements or annual financial report. |
| Reporting | 61B-22.006(6)(c), F.A.C. | Failure to include the required reserve fund disclosures in the annual financial report. |
| Reporting | 61B-22.006(6)(e), F.A.C. | Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association. |
| Reporting | 61B-22.0062(2)(b), F.A.C. | Failure to include in the turnover financial statements a statement of total cash payments made by the developer to the association. |

Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater. Finally, in no event shall a penalty of more than $5,000 be imposed for a single violation. The penalties are set forth in categories 1, 2, and 3, for each violation as follows:

Category 1: $10 — $18 per unit.

Category 2: $20 — $50 per unit.

Category 3: $100 — $300 for each unit offered/created; deposit or contract.

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| Category | Statute or Rule Cite | Description of Conduct/Violation | Suggested Penalty |
| Accounting | 718.111(12)(a)11., F.S. | Insufficient detail in the accounting records | 2 |
| Records | 61B-22.002, F.A.C. | Failure to maintain sufficient accounting records. |  |
| Assessing | 718.112(2)(g), F.S. | Failure to assess at sufficient amounts. | 1 |
| Assessing | 718.115(2), F.S. | Failure to assess based upon proportionate share or as stated in the declaration of condominium. | 2 |
| Assessing | 718.116(1), (9), F.S. | Failure by developer to pay assessments or to pay in timely manner. | 2 |
| Board | 718.110, F.S. 718.112, F.S. | Failure to follow method of amendment. | 2 |
| Board | 718.112(2)(a)1., F.S. | Improper compensation of officers or directors. | 1 |
| Board | 718.112(2)(d)1., F.S. | Failure to hold annual meeting. | 2 |
| Board | 718.112(2)(j), F.S. | Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds. | 2 |
| Board | 718.501(2)(a), F.S. | Failure to pay annual fees to the division. | 2 |
| Budgets | 718.112(2)(e), F.S. | Failure to propose/adopt budget for a given year. | 2 |
| Budgets | 61B-22.003(1)(e), (f), F.A.C. | Failure to include reserve schedule in the proposed budget. | 1 |
| Commingle | 718.111(15), F.S. | Commingling association funds with non-association funds. | 2 |
| Commingle | 718.111(15), F.S. 61B-22.005(2), F.A.C. | Commingling reserve funds with operating funds. | 1 |
| Common Expenses | 718.115(1), F.S. 61B-23.003(3), F.A.C. | Using association funds for other than common expenses. | 2 |

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| Converter Reserves | 718.618(1), F.S. 61B-24.007, F.A.C. | Failure to calculate converter reserves properly. | 2 |
| Converter Reserves | 718.618(2)(a), F.S. | Failure to fund converter reserves in a timely manner. | 2 |
| Converter Reserves | 718.618(3)(b), F.S. | Improper use of converter reserves. | 1 |
| Converter Reserves | 61B-22.003(1)(e)5., F.A.C. 61B-22.006(3)(a)6., F.A.C. 61B-22.006(6)(c), F.A.C. | Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report. | 1 |
| Development | 718.202(1), FS61B-17.009(1), F.A.C. | Developer using an alternative assurance, such as a Letter of Credit or Surety Bond, in lieu of an escrow account, without the prior approval of the Director. | 3 |
| Development | 718.202(1) or (6), F.S. | Failure to establish an escrow account or place funds therein. | 3 |
| Development | 718.301(1), (2), (4), F.S. | Failure to transfer association control. | 2 |
| Development | 718.403(1), F.S. | Continuing to develop phases after expiration of phase deadline. | 3 |
| Development | 718.403(1), (2), F.S. 61B-17.003(10), F.A.C. | Failure to follow proper method to amend documents to alter phase development plan. | 3 |
| Development | 718.502(2)(a), F.S. | Accepting deposits prior to filing reservation and escrow agreements with the division. | 3 |
| Development | 718.502(2)(a), F.S. 61B-17.001(2)(a), F.A.C. | Offering sales contracts prior to initial filing with division and acceptance for form. | 3 |
| Development | 718.502(3), F.S. 61B-17.006(2), F.A.C. | Failure to file amendments to documents previously filed with the division. | 1 |
| Development | 718.503(1)(a), F.S. 61B-18.001(11), F.A.C. | Using sales contracts without required disclosures. | 3 |

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| Development | 718.503(1)(b), F.S. | Failure to provide documents to purchasers. | 3 | |
| Development | 61B-17.001(3), F.A.C. | Closing on sales of units prior to filing with division and acceptance for content. | 3 | |
| Development | 61B-17.001(4), F.A.C. | Failure to provide recording information to the division. | 1 |
| Development | 61B-17.003(2), F.A.C. | Offering sales contracts on units within a phase prior to filing phase documents with the division. | 3 |
| Elections | 718.112(2)(d), F.S. 718.301(1), (2), F.S. 61B-23.0021(2), F.A.C. | Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold. | 2 |
| Elections | 718.112(2)(d)3., F.S. 61B-23.0021(4), F.A.C. | Failure to provide, or timely provide, first notice of election. | 1 |
| Elections | 718.112(2)(d)3., F.S. 61B-23.0021(7), (8), F.A.C. | Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets. | 1 |
| Elections | 718.112(2)(d)3., F.S. | Failure to use ballots or voting machines. | 2 |
| Elections | 718.112(2)(d)3., F.S. 61B-23.0021(9), F.A.C. | Failure to include all timely submitted names of eligible candidates on the ballot. | 1 |
| Elections | 61B-23.0021(10)(a), (b), F.A.C. | Counting ineligible ballots. Not counting ballots in the presence of unit owners. | 1 |
| Elections | 61B-23.0021(10)(c), F.A.C. | Failure to hold runoff election. | 2 |
| Elections | 61B-23.003(7)(f), F.A.C. | Improperly permitting a developer to vote for a majority of the board. | 2 |
| Final Order | 718.501(1)(d)4., F.S. | Failure to comply with final order of the division. | 2 |
| Guarantee | 718.116(9), F.S. 61B-22.004(1), F.A.C. | Guarantee not properly established. | 2 |

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| Guarantee | 718.116(9)(a), F.S. 61B-22.004(3), F.A.C. | Improperly assessing unit owners. | 2 | |
| Guarantee | 718.116(9)(a), F.S. 61B-22.004(5), F.A.C. | Guarantee deficit not funded. | 2 | |
| Guarantee | 61B-22.004(2), F.A.C. | Guarantee period unclear/not specified, not properly extended. | 2 |
| Guarantee | 61B-22.004(4)(a), F.A.C. | Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding of reserves. | 2 | |
| Guarantee | 61B-22.004(4)(b), F.A.C. 61B-22.004(5), F.A.C. | Amount owed by the guarantor for the guarantee period not properly calculated. | 2 | |
| Records | 718.111(12)(a)12., F.S. | Failure to maintain election materials for one year. | 1 | |
| Records | 718.111(12)(a)6., F.S. | Failure to maintain minutes of meetings. | 1 | |
| Records | 718.111(12)(b), F.S. | Failure to maintain records within Florida. | 2 | |
| Records | 718.301(4), F.S. | Failure to deliver one or more association records upon transfer of association control. | 2 | |
| Reporting | 718.111(13), F.S. | Failure to provide the annual financial report. | 2 | |
| Reporting | 718.111(14), F.S. 61B-22.006(7)(b), F.A.C. | Failure to provide year-end financial statements in a timely manner. | 1 | |
| Reporting | 718.111(14), F.S. 61B-22.006(10), F.A.C. | Failure to provide year-end financial statements. | 2 | |
| Reporting | 718.111(14), F.S. 61B-22.006(11)(b), F.A.C. | Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two years of operation. | 2 | |
| Reporting | 718.301(4)(c), F.S. 61B-22.006(7)(c), F.A.C. | Failure to provide turnover financial statements in a timely manner. | 1 | |

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| Reporting | 718.301(4)(c), F.S. | Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period. | 2 |
|  | 61B-22.0062(1), F.A.C. |  |
| Reporting | 61B-22.006(1), F.A.C. | Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis. | 1 |
| Reporting | 61B-22.006(1), F.A.C. | Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA. | 2 |
| Reporting | 61B-22.006(2), F.A.C. | Failure to include one or more components of the year-end financial statements(incomplete). | 1 |
| Reporting | 61B-22.006(3)(a)1.-4., F.A.C. 61B-22.006(6)(c), F.A.C. | Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report. | 1 |
| Reporting | 61B-22.006(3)(e), F.A.C. 61B-22.0062(2)(d), F.A.C. | Guarantee disclosures incomplete in, or missing from, turnover financial statements or year-end financial statements. | 1 |
| Reporting | 61B-22.006(6)(a), (b), (d), F.A.C. | Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements. | 1 |
| Reporting | 61B-22.006(10), F.A.C. | Providing lower level of reporting for year-end financial statements than required. | 2 |
| Reporting | 61B-22.0062(2), F.A.C. | Failure of turnover financial statements to present revenues and expenses for each fiscal year and interim period. | 2 |
| Reporting | 61B-22.0062(2)(a)-(c), F.A.C. | Turnover financial statements omit disclosure of common expenses paid by the developer. | 2 |
| Reserves | 718.112(2)(f)2., F.S. 61B-22.005(3), F.A.C. | Failure to calculate reserve funds properly. | 1 |
| Reserves | 718.112(2)(f)2., F.S. 61B-22.005(6), F.A.C. | Failure to fund reserves in a timely manner. Failure to fully fund reserves. | 1 |
| Reserves | 718.112(2)(f)2., F.S. 61B-22.005(6), (8), F.A.C. | Failure to follow proper method to waive or reduce reserve funding. | 1 |
| Reserves | 718.112(2)(f)2., F.S. 61B-22.005(9), F.A.C. | Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation. | 1 |
| Reserves | 718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C. | Failure to obtain unit owner approval prior to using reserve funds for other purposes. | 2 |
| Special Assessment | 718.116(10), F.S. | Failure to use special assessment funds for intended purposes. | 1 |

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## [Go back to Master Table of Contents](#FloridaAdministrativeCode)

CONDOMINIUM RESOLUTION GUIDELINES   
FOR UNIT OWNER CONTROLLED ASSOCIATIONS

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[**61B-21.002 Educational Resolution.**](#_Toc333987759)

[**61B-21.003 Enforcement Resolution and Civil Penalties.**](#_Toc333987760)

## 61B-21.001 Definitions and Purpose.

Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(1) "Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation or taking any other appropriate measures to redress the harm caused.

(2) "Association” shall have the same meaning as stated in section 718.103(2), F.S.

(3) "Minor violation” is a violation in which the division will issue a Notice of Noncompliance as a first response to a violation of a rule pursuant to rule 1**B**-21.002, F.A.C., due to the violation’s lower potential for publis harm. Failure to timely comply with the Notice of Noncompliance may result in further sanctions and enforcement.

## 61B-21.002 Minor Violation.

(1) The minor violation process, as detailed in this rule chapter, is only applicable to unit owner controlled associations.

(2) If the division has reasonable cause to believe that a minor violation violationhas occurred, a Notice of Noncompliance will be sent to the association. The Notice of Noncompliance shall provide the association with a reasonable period in which to comply with the rule. The Notice of Noncompliance will identify the violation, and provide an investigator’s contact telephone number and an email address so that the association may contact the division obtain educational assistance or an educational conference. The association is solely responsible for statutory or rule compliance. Failure to fully comply with a Notice of Noncompliance will lead to further enforcement action as permitted. The Notice of Noncompliance shall not be considered final agency action.

(3) The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

(4) The following violations shall be considered minor violations for which a Notice of Noncompliance shall be issued.

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| **Category** | **Statute or Rule** | **Description of Conduct/Violation** |
| Budgets | 61B-22.003(1)(b), F.A.C. | Failure to disclose the beginning and ending dates of the period covered by the proposed budget. |
| Budgets | 61B-22.003(1)(c), F.A.C. | Failure to disclose periodic assessments for each unit type in the proposed budget. |
| Elections | 61B-23.0021(7), F.A.C. | Distributing candidate information sheets consisting of more than one page. |
| Elections | 61B-23.0021(9), F.A.C. | Ballot does not list candidates alphabetically by surname. |
| Elections | 61B-23.0021(10)(b), F.A.C. | Outer envelope information verified before the date of the election. |
| Reporting | 61B-22.006(3)(a)5.,6. F.A.C. | Failure to disclose the amount required to fully fund each reserve account as of the end of the fiscal period covered by the annual financial statements; and the manner by which reserve items were estimated and/or the date the estimates were last made in the annual financial statements or turnover audit. Failure to disclose in the year‑end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made. |
| Reporting | 61B-22.006(3)(b),(c), F.A.C. | Failure to disclose the method of allocating income and expenses in the annual financial statements or turnover audit. |

(5) Upon a determination of an association’s failure to comply with a Notice of Noncompliance, an enforcement action shall be taken in which the division shall impose a civil penalty between $5 and $10, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any aggravating or accepted mitigating circumstances, pursuant to rule 61B-21.003(3), F.A.C. The minimum total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater. In no event shall a penalty of more than $2,500 be imposed for a single minor violation. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Nothing in this rule chapter shall limit the division’s ability to seek judicial enforcement and remedies through the courts.The provisions of this rule chapter shall not be construed so as to prohibit or limit any other adminitrative, civil, or criminal action that may be brought, including notices to cease and desist.

## 61B-21.003 Penalty Guidelines.

(1) Pursuant to section 718.501(1)(d)6., F.S., the division sets forth below disciplinary guidelines from which disciplinary penalties will be imposed upon affected parties guilty of violating Chapter 718, F.S., and the rules promulgated thereunder. The purpose of the disciplinary guidelines is to provide notice to affected parties of the range of penalties which may be imposed for each count. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Nothing in this rule chapter shall limit the division’s ability to seek judicial enforcement and remedies through the courts. The provisions of this rule chapter shall not be construed so as to prohibit or limit any other administrative, civil, or criminal action that may be brought, including notices to cease and desist.

(2) Penalties will be assessed beginning with the middle of the specified range and adjusted up or down based upon any aggravating or accepted mitigating circumstances. The minimum total penalty to be assessed shall be calculated according to these guidelines or $1,000, whichever amount is greater. In no event shall a penalty of more than the statutory maximum be imposed for a single violation. A penalty range of $10 to $30 per unit are set forth for each violation. The absence of any violation from this rule chapter shall not be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of the closest analogous violation.

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| **Category** | **Statute or Rule** | **Description of Conduct/Violation** |
| Accounting Records | 718.111(12)(a)11., F.S.  61B-22.002, F.A.C. | Insufficient or incomplete accounting records. |
|
| Accounting Records | 718.111(12)(a)11., F.S. | Failure to maintain separate accounting records for each condominium. |
|
| Assessing | 718.112(2)(g), F.S. | Assessments not sufficient to meet expenses. |
|
| Assessing | 718.112(2)(g), F.S. | Collecting assessments less frequently than quarterly |
| Assessing | 718.115(2), F.S. | Assessments not based upon the shares stated in the declaration of condominium or required by statute. |
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| Assessing | 718.115(4), F.S. | Assessments not properly apportioned among multiple condominiums. |
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| Assessing | 718.116(3), F.S. | Failure to charge interest on past-due assessments. |
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| Assessing | 718.116(9), F.S. | Developer or other owner improperly excused from paying assessments. |
|
| Board | 718.110(4), F.S. | Improperly amending the declaration of condominium to change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium. |
|
| Board | 718.111(4), F.S. | Improper use fee. |
|
| Board | 718.111(7)(a), F.S. | Mortgaging or conveying association property without unit-owner approval. |
|
| Board | 718.111(11)(h), F.S. | Failure to maintain adequate fidelity bonding. |
| Board | 718.112(2)(a)1., F.S. | Compensating officers or members of the board without documentary authority. |
|
| Board | 718.112(2)(i), F.S. | Improper transfer fees or security deposits. |
| Board | 718.116(3), F.S. | Levying late fees without documentary authority. |
|
| Board | 718.303, F.S. | Imposing fines without proper notice and opportunity for hearing. Imposing excessive fines. Improper suspension of voting rights without proper notices. |
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| Board | 718.112(2)(d)2., F.S. | Allowing ineligible person to run for board of administration. |
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| Board | 718.3026(1), F.S. | Failure to obtain competitive bids on contracts that exceed five percent of the association’s budget. |
| Budgets | 718.112(2)(e), F.S. | Failure to propose/adopt budget for a given year. |
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| Budgets | 718.112(2)(f)1., F.S. | Failure to include a schedule of limited common element expenses in budget. |
| Budgets | 61B-22.003(4)(a), F.A.C. | Failure to prepare a separate budget for each condominium operated by the association as well as for the association. |
|
| Budgets | 61B-22.003(1)(e), (f), (g), F.A.C. | Failure to include reserve schedule in the proposed budget. Failure to disclose converter-reserve funding. |
|
| Budgets | 718.112(2)(f)2., F.S.  61B-22.005(3), (5) F.A.C. | Improper calculation of reserve requirements. |
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|
| Commingle | 718.111(14), F.S.  61B-22.005(2), F.A.C. | Commingling reserve funds with operating funds. | |
|
| Common Expenses | 718.103(9), 718.115(1), F.S.  61B-23.003(3), F.A.C. | Using association funds for other than common expenses. | |
|
| Conflict of Interest | 718.112(2)(p), F.S. | Contracting with a service provider owned by a board member. | |
| Conflict of Interest | 718.3027(1),(2),(4), F.S. | Failing to properly disclose a conflict of interest. | |
| Converter Reserves | 718.618(3)(b), F.S. | Improper use of converter reserves. | |
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| Debit Card | 718.111(15), F.S. | Use of an association debit card for any association expense. |
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| Elections | 718.112(2)(d), F.S.  61B-23.0021(2), F.A.C. | Failure to hold an annual election. |
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| Elections | 718.112(2)(d)4., F.S. | Failure to use ballots or voting machines. |
|
| Elections | 61B-23.0021(8), F.A.C. | Failure to provide space for name, unit number, or signature on outer envelope. |
| Elections | 718.112(2)(d)4.a., F.S.  61B-23.0021(4), F.A.C. | Failure to provide, or timely provide, first notice of election. |
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| Elections | 61B-23.0021(3), F.A.C. | Improper nomination procedures in election. |
|
| Elections | 61B-23.0021(2), F.S. | Election not held at time and place of annual meeting. |
|
| Elections | 61B-23.0021(6), F.A.C. | Failure to provide candidate with a receipt for written notice of candidacy. |
|
| Elections | 718.112(2)(d)4.a., F.S.  61B-23.0021(7), (8), F.A.C. | Failure to provide, or timely provide, second notice of election or omitting ballots, envelopes, or candidate information sheets. |
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| Elections | 718.112(2)(d)4., F.S.  61B-23.0021(5), F.A.C. | Ballot included a candidate who is ineligible. Ballot not including an eligible candidate. |
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| Elections | 61B-23.0021(8), F.A.C. | Voters allowed to rescind or change their previously cast ballots. |
|
| Elections | 61B-23.0021(8), F.A.C. | Second notice of election and accompanying documents included comments by board about candidates. |
|
| Elections | 61B-23.0021(10)(a), F.A.C. | Ballots not counted by impartial committee. |
|
| Elections | 718.112(2)(d)4., F.S.  61B-23.0021(7), F.A.C. | Association altered or edited candidate-information sheets. |
|
| Elections | 61B-23.0021(10)(a), F.A.C. | Inner envelopes not placed in separate receptacle before being opened. |
|
| Elections | 61B-23.0021(9), F.A.C. | Ballots not uniform. Ballots identify voter. Ballot contained space for write-in candidate. |
|
| Elections | 61B-23.0021(10), F.A.C. | Outer envelopes not checked against list of eligible voters. |
|
| Elections | 61B-23.0021(10)(a), (b), F.A.C. | Counting ineligible ballots. |
|
| Elections | 61B-23.0021(10), F.A.C. | Failure to count properly cast ballots. |
|
| Elections | 61B-23.0021(10), F.A.C. | Outer envelopes opened prior to election meeting.  Outer envelopes not opened in presence of unit owners. |
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| Elections | 61B-23.0021(10)(a), F.A.C. | Not counting ballots in the presence of unit owners. |
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| Elections | 61B-23.0021(10)(b), F.A.C. | Failure to notice meeting to verify outer envelope information. |
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| Elections | 61B-23.0021(10)(c), F.A.C. | Failure to timely hold a runoff election. |
|
| Elections | 61B-23.003(7)(f), F.A.C. | Improperly permitting a developer to vote for a majority of the board. |
|
| Elections | 61B-23.0021(10)(a), F.A.C. | No blank ballots available at election meeting. |
|
| Estoppel Certificate | 718.116(8), F.S. | Failure to timely provide an estoppel certificate or failure of the certificate to contain all required components. |
| Final Order | 718.501(1)(d)6., F.S. | Failure to comply with final order of the division. |
|
| Fiduciary Duty | 718.111(1)(a), F.S. | Violating a fiduciary duty. |
| Investigation | 718.501(1)(n), F.S. | Failure to reasonably cooperate with an investigation. |
| Property | 718.111(7)(a), F.S. | Failing to get approval for acquisition, conveyance, lease, or mortgage of association real property. |
| Property | 718.111(9), F.S. | Improper purchase of unit at a foreclosure sale. |
| Records | 718.111(12)(a), F.S. | Failure to maintain official records. |
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| Records | 718.111(12)(c), F.S.  718.115(1)(a), F.S. | Requiring a unit owner to pay a fee for access to association records. |
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| Records | 718.111(12)(b), F.S. | Failure to maintain records within 45 miles, or within the county, of the condominium property. |
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| Records | 718.111(12)(b), (c), F.S. | Failure to timely provide access to records.  Failure to allow scanning or copying of records. |
|
| Records | 718.111(12)(f), F.S.  718.501(1)(d)6., F.S. | Failure of outgoing board or committee member or 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. |
|
| Reporting | 718.111(13), F.S. | Failure to timely provide annual financial report or statements. |
|
| Reporting | 61B-22.006(1), F.A.C. | Failure to timely prepare annual financial statements using fund accounting. Failure to prepare annual financial statements on accrual basis. |
|
| Reporting | 61B-22.006(1), F.A.C. | Failure to prepare annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited annual financial statements prepared by a Florida-licensed CPA. |
|
| Reporting | 61B-22.006(2), F.A.C. | Failure to include one or more components of the annual financial statements (incomplete). |
|
| Reporting | 61B-22.006(3)(a)1.,6., F.A.C.  61B-22.006(6), F.A.C. | Failure to make significant reserve fund disclosures in annual financial statements or annual financial report. |
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| Reporting | 61B-22.006(3)(a)7., F.A.C.  61B-22.006(6), F.A.C. | Failure to include converter reserve disclosures in the annual financial statements or annual financial report. |
|
| Reporting | 61B-22.006(4), F.A.C. | Failure to include reserve fund disclosures and/or revenues, expenses, and changes in fund balances for each condominium and the association in the annual financial statements of a multi-condominium association. |
|
| Reporting | 61B-22.006(5), F.A.C. | Failure to show developer assessments separately from other assessment revenues in the annual financial report (statement). |
|
| Reporting | 61B-22.006(3), F.A.C.  61B-22.006(6)(c), F.A.C. | Failure to include the special assessments disclosures in the annual financial statements or annual financial report. |
| Reporting | 61B-22.006(6)(e), F.A.C. | Failure to separately present revenues and expenses for each condominium and the association in the annual financial report of a multi-condominium association. |
|
| Reporting | 61B-22.006(3)(e), F.A.C. | Guarantee disclosures incomplete or missing from annual financial statements. |
|
| Reporting | 61B-22.004(5), F.A.C. | Improper calculation of guarantor’s final obligation. |
|
| Reporting | 718.111(13)(b), F.S.  61B-22.006(6)(a), F.A.C. | Annual financial report not prepared on a cash basis. |
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| Reporting | 718.111(13)(b)3., F.S. | Annual financial report does not include specified receipt or expenditure items. |
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| Reporting | 61B-22.006(3)(d), F.A.C.  61B-22.006(6)(d), F.A.C. | Annual financial statements or annual financial report does not disclose revenues and expenses related to limited common elements. |
|
| Reporting | 718.111(13)(a), F.S. | Providing lower level of annual financial reporting than required based on the number of units and annual revenues. |
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| Reserves | 718.112(2)(f)2., F.S.  61B-22.005(6), F.A.C. | Failure to fund reserves in a timely manner. Failure to fully fund reserves. |
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| Reserves | 718.112(2)(f)2., F.S.  61B-22.005(8), F.A.C. | Failure to follow proper method to waive or reduce reserve funding. |
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| Reserves | 718.112(2)(f)3., F.S.  61B-22.005(7), F.A.C. | Using reserve funds for other purposes without proper unit owner approval. |
|
| Reserves | 718.112(2)(f)2., F.S.  61B-22.005(8), F.A.C. | Failure to follow proper method to waive or reduce reserve funding. |
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| Reserves | 718.112(2)(f)3., F.S.  61B-22.005(7), F.A.C. | Using reserve funds for other purposes without proper unit owner approval. |
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| Special Assessment | 718.116(10), F.S. | Using special assessment funds for other purposes. |
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| Special Assessment | 718.116(10), F.S. | Special assessment notice does not state purpose of assessment. |
| Website | 718.111(12)(g), F.S. | Failing to include required documents on website. |
| Special Assessment | 718.116(10), F.S. | Using special assessment funds for other purposes. |
| Special Assessment | 718.116(10), F.S. | Special assessment notice does not state purpose of assessment. |
| Website | 718.111(12)(g), F.S. | Failing to include required documents on website. |

(3) When either the Petitioner or Respondent is able to demonstrate aggravating or mitigating circumstances to the division or hearing officer in an enforcement action by clear and convincing evidence, the division or hearing officer shall be entitled to deviate from the above guidelines in imposing or recommending discipline.

(a) Aggravating circumstances may include, but are not limited to, the following:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.

2. Financial loss to parties or persons affected by the violation.

3. Financial gain to parties or persons responsible for the violation.

4. The disciplinary history of the association.

5. The harm caused to unit owner(s) or other persons or entities.

6. The violation occurred for a long period of time.

7. The length of time between violations

8. The association impeded the division’s investigation or authority.

(b) Mitigating circumstances may include, but are not limited to, the following:

1. The violation or harm was related to a natural or manmade disaster.

2. The violation caused no harm to unit owner(s) or other persons or entities.

3. The association took affirmative or corrective action before it received the division’s written notification of the violation.

4. The association expeditiously took affirmative or corrective action after it received the division’s written notification of the violation.

5. The association cooperated with the division during the investigation.

(4) In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney’s fees, court costs, service fees, collection costs, and damages allowed by law.

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# Financial and Accounting Requirements; budgets reserves, and guarantees

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**61B-22.001 Definitions.**

For the purposes of this chapter the following definitions shall apply:

(1) “Accounting records” include all of the books and records identified in section 718.111(12)(a)11., Florida Statutes, and any other records that identify, measure, record, or communicate financial information whether the records are maintained electronically or otherwise, including, all payroll and personnel records of the association all invoices for purchases made by the association, and all invoices for services provided to the association.

(2) “Capital expenditure” means any expenditure of funds for:

(a) The purchase of an asset whose useful life is greater than one year in length;

(b) The replacement of an asset whose useful life is greater than one year in length;

(c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.

(3) “Deferred maintenance” means any maintenance or repair that:

(a) Will be performed less frequently than yearly; and

(b) Will result in maintaining the useful life of an asset.

(4) “Funds” means money and negotiable instruments including, for example, cash, checks, notes, and securities.

(5) “Reserves” means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by section 718.112(2)(f)2., Florida Statutes, and any other funds restricted as to use by the condominium documents or the condominium association. Funds that are not restricted as to use by Section 718.112(2)(f), Florida Statutes, the condominium documents or by the association shall not be considered reserves within the meaning of this rule.

(6) “Turnover” means transfer of association control from developers to non-developer unit owners pursuant to Section 718.301, Florida Statutes.

## 61B-22.002 Accounting records.

All associations shall maintain accounting records in sufficient detail to permit determination of the revenues and expenses or receipts and disbursements attributable to separate condominiums and operating and reserve funds. Multi-condominium associations shall maintain separate accounting records for the association and for each condominium operated by the association. Multicondominium associations created prior to July 1, 2000, that do not create separate ownership interests of the common surplus of the association for each unit, as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall not maintain separate fund balances for the association, and shall allocate all association revenues and expenses to each condominium operated by the association pursuant to the provisions of each condominium’s declaration.

## 61B-22.003 Budgets.

(1) Required elements for estimated operating budgets. The budget for each association shall:

(a) State the estimated common expenses or expenditures on at least an annual basis;

(b) Disclose the beginning and ending dates of the period covered by the budget;

(c) Show the total assessment for each unit type according to proportion of ownership on a monthly basis, or for any other period for which assessments will be due;

(d) Include all estimated common expenses or expenditures of the association including the categories set forth in section 718.504(21)(c), Florida Statutes. Reserves for capital expenditures and deferred maintenance required by section 718.112(2)(f), Florida Statutes, must be included in the proposed annual budget and shall not be waived or reduced prior to the mailing to unit owners of a proposed annual budget. If the estimated common expense for any category set forth in the statute is not applicable, the category shall be listed followed by an indication that the expense is not applicable;

(e) Unless the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a schedule stating each reserve account for capital expenditures and deferred maintenance as a separate line item with the following minimum disclosures:

1. The total estimated useful life of the asset;

2. The estimated remaining useful life of the asset;

3. The estimated replacement cost or deferred maintenance expense of the asset;

4. The estimated fund balance as of the beginning of the period for which the budget will be in effect; and

5. The developers total funding obligation, when all units are sold, for each converter reserve account established pursuant to section 718.618, Florida Statutes, if applicable.

(f) If the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a separate schedule of any pooled reserves with the following minimum disclosures:

1. The total estimated useful life of each asset within the pooled analysis;

2. The estimated remaining useful life of each asset within the pooled analysis;

3. The estimated replacement cost or deferred maintenance expense of each asset within the pooled analysis; and

4. The estimated fund balance of the pooled reserve account as of the beginning of the period for which the budget will be in effect.

(g) Include a separate schedule of any other reserve funds to be restricted by the association as a separate line item with the following minimum disclosures:

1. The intended use of the restricted funds; and

2. The estimated fund balance of the item as of the beginning of the period for which the budget will be in effect.

(2) Unrestricted expense categories. 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.

(3) Record keeping requirements for budgets. The minutes of the association shall reflect the adoption of the budget and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the association.

(4) Multicondominium associations. Multicondominium associations shall comply with the following requirements:

(a) Provide a separate budget for each condominium operated by the association as well as for the association. Each such budget shall disclose:

1. Estimated expenses specific to a condominium such as the maintenance, deferred maintenance or replacement of the common elements of the condominium which shall be provided for in the budget of the specific condominium;

2. Estimated expenses of the association that are not specific to a condominium such as the maintenance, deferred maintenance or replacement of the property serving more than one condominium which shall be provided for in the association budget; and,

3. Multicondominium associations created after June 30, 2000, or that have created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each unit’s share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets. Multicondominium associations created prior to July 1, 2000, that have not created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each condominiums share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets.

4. The budgets of multicondominium associations created after June 30, 2000 or of multicondominium associations that have created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall show the estimated revenues of each condominium and of the association.

(b) Associations that operate separate condominiums in a consolidated fashion pursuant to section 718.111(6), Florida Statutes, may utilize a single consolidated budget.

(5) Limited common elements. If an association maintains limited common elements at the expense of only those unit owners entitled to use the limited common elements pursuant to section 718.113(1), Florida Statutes, the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the limited common elements, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may group the maintenance expense of any limited common elements for which the declaration provides that the maintenance expense is to be shared by a group of unit owners.

(6) Phase condominium budgets. By operation of law, the annual budget of a phase condominium created pursuant to Section 718.403, Florida Statutes, shall automatically be adjusted to incorporate the change in proportionate ownership of the common elements by the purchasers and to incorporate any other changes related to the addition of phases in accordance with the declaration of condominium. The adjusted annual budget shall be effective on the date that the amendment to the declaration adding a phase to a phase condominium is recorded in the official records of the county in which the condominium is located. Notwithstanding the requirements of subsection (7) of this rule, the association shall not be required to follow the provisions of Section 718.112(2)(c), Florida Statutes, unless, as a result of the budget adjustment, the assessment per unit has changed.

(7) Budget assessment amendments. The association may amend a previously approved annual budget. In order to do so the board of administration shall follow the provisions of Section 718.112(2)(e), Florida Statutes. For example, the board shall mail a meeting notice and copies of the proposed amended annual budget to the unit owners not less than 14 days prior to the meeting at which the budget amendment will be considered.

## 61B-22.004 Guarantee of Common Expenses under s. 718.116(9)(a)2., F.S..

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts, declaration, or prospectus, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the voting interests of the unit owners other than the developer. Approval shall be expressed at a meeting of the unit owners, voting in person or by limited proxy; or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this rule.

(2) Guarantee period. The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

(a) The ending date or event shall be the same for all of the unit owners of a condominium, including unit owners in different phases of phase condominiums, but may vary for each condominium operated by a multi-condominium association.

(b) The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

(c) The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) Maximum level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each type of unit identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a unit owner shall not exceed the maximum obligation of the unit owner based on the total amount of the adopted budget and the unit owner’s proportionate ownership share of the common elements.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from unit owner assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and,

(b) Expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5) of this rule. If the expenses attributable to non-assessment revenues exceed non-assessment revenues only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately. Capital contributions collected from unit owners are not revenues, and shall not be used to pay common expenses.

(5) Calculation of guarantor’s final obligation. The guarantor’s total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period, including the full finding of the reserves unless properly waived; less.

(b) The total regular periodic assessments earned by the association from the unit owners other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(c) If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created prior to July 1, 2000, the guarantor’s financial obligation to the association shall be calculated as provided in paragraphs (a) and (b) for each condominium in which the guarantee existed. If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created after June 30, 2000, or within a multicondominium association created prior to July 1, 2000, that has created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, the guarantor’s financial obligation to the association shall include the amount calculated pursuant to Section 718.116(9)(c), Florida Statutes.

(d) Expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5) of this rule. If the expenses attributable to non-assessment revenues exceed non-assessment revenues only the excess expenses shall be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately.

## 61B-22.005 Reserves.

(1) Reserves required by statute. Reserves required by section 718.112(2)(f), Florida Statutes, for capital expenditures and deferred maintenance including roofing, painting, paving, and any other item for which the deferred maintenance expense or replacement cost exceeds $10,000 shall be included in the budget. For the purpose of determining whether the deferred maintenance expense or replacement cost of an item exceeds $10,000, the association may consider each asset of the association separately. Alternatively, the association may group similar or related assets together. For example, an association responsible for the maintenance of two swimming pools, each of which will separately require $6,000 of total deferred maintenance, may establish a pool reserve, but is not required to do so.

(2) Commingling operating and reserve funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

(3) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by section 718.112(2)(f), Florida Statutes, shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves required by Section 718.112(2)(f), Florida Statutes, shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

(a) If the association maintains separate reserve accounts for each of the required assets, the amount of the current year contribution to each reserve account shall be the sum of the following two calculations:

1. The total amount necessary, if any, to bring a negative account balance to zero; and

2. The total estimated deferred maintenance expense or estimated replacement cost of the reserve asset less the estimated balance of the reserve account as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the asset. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

(b) If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not 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 are equal to or greater than 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. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(4) Estimating reserves that are not required by statute. Reserves that are not required by section 718.112(2)(f), Florida Statutes, are not required to be based on any specific formula.

(5) Estimating non-converter reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established converter reserves pursuant to section 718.618, Florida Statutes, shall be the sum of:

(a) The developer’s total funding obligation, when all units are sold, for the converter reserve account pursuant to section 718.618, Florida Statutes; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer’s converter obligation, as of the beginning of the period for which the budget will be in effect.

(6) Timely funding. Reserves included in the adopted budget are common expenses and must be fully funded unless properly waived or reduced. Reserves shall be funded in at least the same frequency that assessments are due from the unit owners (e.g. monthly or quarterly).

(7) Restrictions on use. In a multicondominium association, no vote to allow an association to use reserve funds for purposes other than that for which the funds were originally reserved shall be effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present in person or by proxy, and a majority of those present in person or by limited proxy, vote to use reserve funds for another purpose. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts have been established.

(8) Annual vote required to waive reserves. Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by section 718.112(2)(f)2., Florida Statutes, shall be effective for only one annual budget. Additionally, in a multicondominium association, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves. For multicondominium associations in which the developer is precluded from casting its votes to waive or reduce the funding of reserves, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of non-developer voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves.

## 61B-22.006 Financial Reporting Requirements.

(1) Basis of accounting. The financial statements required by Sections 718.111(13) and 718.301(4), F. S., shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association’s financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms “generally accepted accounting principles,” “standards for accounting and review services,” and “generally accepted auditing standards” shall have the same meaning as set forth in Chapter 61H1-20, F. A. C.

(2) Components. The financial statements required by Sections 718.111(13) and 718.301(4), F. S., shall at a minimum include the following components:

(a) Accountant’s or Auditor’s Report;

(b) Balance Sheet;

(c) Statement of Revenues and Expenses;

(d) Statement of Changes in Fund Balances;

(e) Statement of Cash Flows; and

(f) Notes to financial statements.

(3) Disclosure requirements. The financial statements required by Sections 718.111(13) and 718.301(4), F. S., shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:

1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;

2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;

3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;

4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;

5. The amount of annual funding required to fully fund each reserve account, or pool of accounts, over the remaining useful life of the applicable asset or group of assets;

6. The manner by which reserve items were estimated, the date the estimates were last made, the association’s policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and

7. If the developer has established converter reserves pursuant to Section 718.618(1), F. S., each converter reserve account shall be identified and include the disclosures required by this rule.

(b) The method by which income and expenses were allocated to the unit owners;

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to Section 718.116(10), F. S., and the amount of each special assessment and the disposition of the funds collected;

(d) 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; and

(e) If a guarantee pursuant to Section 718.116(9), F. S., existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

5. The amount of expenses incurred in the production of non-assessment revenues, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

6. The amount of the developer’s payments pursuant to the guarantee; and

7. Any financial obligation due to or from the developer resulting from the guarantee.

(4) Multicondominium associations. Multicondominium associations may present the financial statements required by Sections 718.111(13) and 718.301(4), F. S., 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. Additionally, 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. The provisions of this rule shall apply to multicondominium financial reporting for fiscal periods ending on or after December 31, 2002. Earlier application of the provisions of this rule is permitted.

(5) Developer assessments. All financial reporting required by Chapter 718, F. S., shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(6) Financial reports required by Section 718.111(13)(b), F.S.. The financial report required by Section 718.111(13)(b), F. S. shall meet the following requirements:

(a) The report shall be prepared using a cash basis method of accounting.

(b) The report shall include the reserve disclosures required by paragraph 61B-22.006(3)(a), F.A.C.

(c) The report shall include the special assessment disclosure required by paragraph 61B-22.006(3)(c), F.A.C.

(d) If the association maintains limited common elements and the expense is apportioned to those units entitled to the exclusive use of the limited common elements the report shall contain the limited common element disclosures required by paragraph 61B-22.006(3)(d), F.A.C.

(e) The financial reports of multicondominium associations shall separately disclose the following items:

1. The receipts and expenditures directly associated with specific condominiums; and

2. The receipts and expenditures of the association that are not directly associated with specific condominiums.

(7) The minutes of the association shall reflect the number of votes cast by the membership to waive the requirement for audited, reviewed, or compiled financial statements and the type of financial reporting that the association will be preparing and disseminating to the membership

## 61B-22.0062 Transition Financial Statements; Turnover Audit.

(1) Period covered. The audit required by section 718.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to section 718.301(4), Florida Statutes, occurring on or after April 1, 1992. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last audit.

(2) Additional disclosure requirements for turnover audits. The financial statements, notes, or supplementary information shall present the revenues and expenses separately for each fiscal year and any interim periods included in the audit. The notes to the financial statements shall contain the following disclosures.

(a) A statement that the financial statements were prepared pursuant to section 718.301(4)(c), Florida Statutes;

(b) A statement of total cash payments made by the developer to the association;

(c) If the developer claims to have paid common expenses of the association which do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and,

(d) If a guarantee pursuant to section 718.116(9), Florida Statutes, existed at any time during the period covered by the audit the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

5. The amount of expenses incurred by the association in the production of non-assessment revenues, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

6. The amount of the developer’s payment’s pursuant to the guarantee; and

7. Any financial obligation due to or from the developer resulting from the guarantee.

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## 61B-23.001 Board of Administration and Committees; Fiduciary Duty.

(1) (a) “Meeting of the board of administration” means any gathering of the members of the board of directors, at which a quorum of the members is present, for the purpose of conducting association business.

(b) "Committee meeting" means any gathering of a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board at which a quorum of the members of that committee is present. For example, a meeting of an executive committee, as defined in section 617.0825, Florida Statutes, or as that section may subsequently be renumbered, would be included in this definition as would a meeting of a group charged with developing a proposed budget.

(2) Unit owners have the right to attend and observe all meetings of the board of administration and its committees.

(3) Where the declaration, articles of incorporation, or bylaws preclude non-unit owners from serving on the association’s board of administration, one acting under a power of attorney from a unit owner is similarly precluded from serving on the board unless he or she is a unit owner.

(4) In furtherance of its fiduciary duty to the unit owners, a board of administration shall employ only a licensed community association manager where licensure is required by section 468.431, Florida Statutes.

## 61B-23.002 Operation of the Association.

(1) Each association which operates more than 2 units shall pay an annual fee of $4 for each unit in a residential condominium operated by the association. If the declaration is amended during the year to alter the number of units or to add additional phases containing units, the association shall pay the annual fee on the highest number of declared units during the year. The fee shall be paid as follows:

(a) The division shall provide to the association an annual fee statement. The failure to receive the Annual Fee Statement shall not relieve the association of the obligation to pay the fee. Annual fees shall be paid online at www.MyFloridaLicense.com or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(b) The initial annual fees are due for the year in which a declaration of condominium is recorded. Payment shall be made within 30 days of recordation of the declaration or amendments creating subsequent phases. Payment shall be submitted to the division along with the notice of recordation required by subsection 61B-17.001(4), F.A.C.

(c) Subsequent annual fees are due on or before January 1 of each year.

(2) The association shall, within 30 days of a change of address, notify the division of its new mailing address.

(3) Each association that votes to forego retrofitting of the common elements, association property, or units of a residential condominium with a fire sprinkler system, or the common elements or units of a residential condominium with handrails or guardrails, shall report the voting results and certification information for each affected condominium to the division on DBPR Form [CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS](http://www.myfloridalicense.com/dbpr/lsc/documents/co6000_8_retrofit.pdf), incorporated herein by reference and effective 11-30-04. If retrofitting has been undertaken by a residential condominium, the association shall report the per-unit cost of such work to the division [CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS](http://www.myfloridalicense.com/dbpr/search_results.html?cx=005461694224298471732%3A8iaabfwlcno&cof=FORID%3A11&q=CO+6000-8%2C+RETROFITTING+REPORT+FOR+CONDOMINIUMS&sa=Search) on DBPR Form CO 6000-8. DBPR Form CO 6000-8 must be filed with the division within 60 days of recordation of the retrofitting waiver certificate in the public records where the condominium is located or upon commencement of the retrofitting project. DBPR Form CO 6000-8 may be obtained by writing the division at Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system and the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year. [CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS](http://www.myfloridalicense.com/dbpr/search_results.html?cx=005461694224298471732%3A8iaabfwlcno&cof=FORID%3A11&q=CO+6000-8%2C+RETROFITTING+REPORT+FOR+CONDOMINIUMS&sa=Search).

(4) (a) As provided for by Sections 718.1085 and 718.112(2)(1), F.S., any vote to waive a retrofitting requirement shall be held at a duly called meeting of the membership, with members voting live and in person, or may be conducted without a membership meeting by written consents, or may be conducted by a combination of the two with the association counting written consents received along with votes cast live and in person at a duly called meeting of the membership. Effective October 1, 2004, retrofitting requirements related to a fire sprinkler system may also be waived by the use of limited proxies cast at a duly called meeting of the membership.

(b) The written consent form utilized by the association must contain a space for the authorized voter to sign and must identify the unit owned. Voting by written consents or written agreements may be utilized by an association regardless of whether the bylaws or the declaration specifically permit voting by written consents or written agreements.

(5) Unit owners shall not, except as provided by Section 718.112(2)(b)2., Florida Statutes, vote by general proxy, but may vote by limited proxy substantially similar to the SAMPLE LIMITED PROXY FORM adopted by the division as [DBPR Form CO 6000-7](http://www.myfloridalicense.com/dbpr/lsc/documents/CO-6000-7SampleLimitedProxy62309.pdf), incorporated herein by reference and effective June 23, 2009. The form may be obtained by writing the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030 or may be downloaded at http://www.myflorida.com/dbpr/lsc/LSCMHCondominiumForms.html.

(6) If the declaration, articles of incorporation or association bylaws require or authorize the use of voting certificates, the voter named on such certificate is the only person authorized to appoint a proxy even though the unit is owned by more than one person or entity or is owned by an entity which is not a natural person.

(7) (a) Beginning April 1, 1992, each association must prepare and maintain as part of its official records, a completed Frequently Asked Questions and Answers Sheet substantially conforming to [DBPR form](http://www.myfloridalicense.com/dbpr/lsc/documents/6000-4_faq_sheet.pdf) [CO 6000-4](http://www.myfloridalicense.com/dbpr/lsc/documents/6000-4_faq_sheet.pdf), as referenced in Rule 61B-17.001, F.A.C. The association shall update the information provided in the answers to the Frequently Asked Questions and Answers Sheet and prepare a revised sheet every 12 months beginning from when the sheet was last revised. The answers to the questions may be summary in nature, in which case the answer shall refer to identified portions of the condominium documents.

(b) Other records related to the operation of the association, which the association shall maintain as official records pursuant to Section 718.111(12)(a)15., F.S., or as that subparagraph may be subsequently renumbered, shall include, for example:

1. Correspondence and other written communication from the division;

2. A copy of all insurance records; and

3. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

(c) Those copies of the declaration, articles of incorporation, bylaws, and amendments to the foregoing, which the association is required to keep pursuant to Section 718.111(12)(c), F.S., are the recorded declaration, recorded articles of incorporation, recorded bylaws, including exhibits, and the recorded amendments to each. The association may charge its actual costs for preparing and furnishing these documents to those requesting the same.

(8) For the purposes of establishing a quorum at any association meeting only the voting interests present in person or by proxy shall be counted. The written joinder or absentee ballot of a unit owner may not be utilized to establish a quorum.

(9) Subject to reasonable restrictions, any unit owner has the right to speak at unit owner meetings, with respect to all designated agenda items. On or after April 1, 1992, subject to reasonable restrictions, any unit owner has the right to speak at board meetings and committee meetings with respect to all designated agenda items.

(10) Any unit owner may tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(a) The only audio and video equipment and devices which unit owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions.

(b) If adopted in advance by the board or unit owners as a written rule, audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(c) If adopted in advance by the board or unit owners as a written rule, anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

(d) If adopted in advance by the board or unit owners as a written rule, advance notice shall be given to the board by any unit owner desiring to utilize any audio or video equipment.

(e) Unit owners are entitled to tape record or videotape board meetings and committee meetings occurring on or after April 1, 1992.

## 61B-23.0021 Regular Elections; Vacancies Caused By Expiration Of Term, Resignations, Death, Election Monitors.

(1) (a) Unless otherwise provided herein, the provisions of this rule apply to all regular and run-off elections conducted by a condominium association, regardless of any provision to the contrary contained in the declaration, articles of incorporation, or bylaws of the association.

(b) Except as otherwise provided by Rules 61B-23.0027 and 61B-23.0028, F.A.C., the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-23.0026 through 61B-23.0028, F.A.C.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 718.112(2)(d), F.S., an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association’s bylaws. Such vote must be taken on or after June 14, 1995. The phrase “different voting and election procedures” as used in this rule and as used in Section 718.112(2)(d), F.S., refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to Section 718.112(2)(d)9., F.S., to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances.

(2) A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the unit owners, regardless of whether a quorum is attained for the meeting.

(3) A board of administration shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the board. A board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the board.

(4) The first notice of the date of the election, which is required to be mailed, electronically transmitted, or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association. 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. Failure to follow the procedures for giving the first notice of the date of the election shall require the association to conduct a new election, if the election has been conducted. Where the election has not occurred, the association shall mail, transmit, or deliver an amended first notice to the eligible voters not less than 60 days before the scheduled election, which shall explain the need for the amended notice. If an amended notice cannot be mailed, transmitted or delivered not less than 60 days before the election, then the association must re-notice and reschedule the election.

(5) A unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Written notice shall be effective when received by the association. Written notice shall be accomplished in accordance with one or more of the following methods:

(a) By certified mail, return receipt requested, directed to the association; or

(b) By personal delivery to the association; or

(c) By regular U.S. mail, facsimile, telegram, or other method of delivery to the association.

(6) Upon receipt by the association of any timely submitted written notice by personal delivery that a unit owner or other eligible person desires to be a candidate for the board of administration, the association shall issue a written receipt acknowledging delivery of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate’s background, education, and qualifications. The information contained therein shall not exceed one side of the sheet, which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. The failure of an association to mail, transmit or personally deliver a copy of a timely delivered information sheet of each eligible candidate to the eligible voters shall require the association to mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include the information sheet(s) not included with the initial second notice. If an amended second notice cannot be timely mailed, transmitted or delivered, the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renotice the election following the procedures as set forth in subsection (8) of this rule. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the association.

(8) In accordance with the requirements of Section 718.112(2)(d), F.S., the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the board that endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

(9)(a) The ballot shall indicate in alphabetical order by surname each and every unit owner or other eligible person who desires to be a candidate for the board of administration, and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has withdrawn his candidacy in writing prior to the mailing of the ballot. The failure of the ballot to indicate the name of each eligible person shall require the association to mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include a revised ballot with the names of all eligible persons. If an amended second notice cannot be timely mailed, transmitted or delivered, then the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renotice the election following the procedures as set forth in subsection (8) of this rule. No ballot shall indicate which candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests in a condominium are not entitled to one whole vote (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all ballot forms utilized by a condominium association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(b) If the ballot includes the name of any ineligible person, the association shall mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include a revised ballot with the names of only the eligible persons. If an amended second notice cannot be timely mailed, transmitted or delivered, then the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renotice the election following the procedures as set forth in subsection (8) of this rule. This paragraph (b) does not apply to a ballot that includes the name of any ineligible person who became ineligible after the deadline for filing a notice of intent to be a candidate.

(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b). The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked “Disregarded” or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. 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. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked “Disregarded”, or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, “impartial” shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;

2. Officers; and

3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked “Disregarded” or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the association shall, unless otherwise provided in the bylaws, conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a notice of a runoff election. The only candidates eligible for the runoff election to the board position are the runoff candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the runoff election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the association. 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 vote occurred.

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

(12) Any voter 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 to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter’s choice.

(13) At a minimum, all voting machines shall meet the following requirements:

(a) Shall secure to the voter secrecy in the act of voting;

(b) Shall permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for, but no more;

(c) Shall correctly register or record, and accurately count all votes cast for any and all persons;

(d) Shall be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read the ballots; and

(e) Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

(14) Notices of election, notices of candidacy for election, information sheets, voting envelopes, written approval of budgets, written agreements for recall of board members, ballots, sign-in sheets, voting proxies, and all other papers or electronic records relating to voting by unit owners shall be maintained as part of the official records of the association for a period of 1 year from the date of the election, vote, or meeting to which the document relates.

(15) Election Monitors. The procedures for filing a petition for the appointment of an election monitor are contained in Rule 61B-23.00215, F.A.C.

**61B-23.00211 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.

(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 renotice the election following the procedures as set forth in subsection 61B-23.0021(8), F.A.C

## 61B-23.00215 Ombudsman; Election Monitoring; Monitor’s Role; Scope and Extent.

(1) Fifteen percent of the total voting interests entitled to vote at the annual meeting of unit owners for the election of directors, or the owners of six units entitled to vote at the annual meeting of unit owners for the election of directors, whichever number is greater, may petition the ombudsman for the appointment of an election monitor to attend the annual meeting of unit owners for the election of directors and conduct the election of directors. No monitor shall be appointed for a special election, an interim election, a runoff election, an election to fill vacancies caused by a recall of one or more board members, or any election other than the annual meeting of unit owners for the election of directors.

(2) (a) Form of petition. In order to file a petition for the appointment of an election monitor, a unit owner must complete DBPR FORM [CO 6000-9, PETITION FOR APPOINTMENT OF ELECTION MONITOR](http://www.myfloridalicense.com/dbpr/lsc/documents/6000_9_election_monitor.pdf), incorporated by reference and effective 8-7-05, available by contacting the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1400 West Commercial Blvd., Suite 185, Fort Lauderdale, FL 33309-3782, or shall use a substantial equivalent of the form which shall contain the following information. The form must, as applicable:

1. State that the purpose of the petition is to seek signatures for the appointment of an election monitor by the ombudsman for the annual meeting of unit owners for the election of directors;

2. Contain a signature space for authorized unit owners or voting interests to sign and must provide a space for those signing the petition to provide his or her name;

3. Identify his or her unit number;

4. Supply the date that each unit owner signed the petition;

5. Provide the name of an individual who is authorized to represent the unit owners petitioning for the appointment of an election monitor, along with the mailing address, telephone number, fax number, and email address of the representative;

6. Indicate that if a monitor is appointed, the association and all its members shall be obligated to pay the costs and fees of the monitor; and

7. State the total number of voting interests in the association.

8. Briefly state the basis for having an election monitor appointed (optional).

9. State the date, place, and time of the election.

(b) Only the signatures of those persons who are unit owners of record shall be counted in the calculation to determine whether the minimum number of votes have been cast in favor of requesting the appointment of a monitor.

(3) Time to file. The petition for appointment of an election monitor must be filed with the ombudsman not less than 14 days in advance of a planned election to provide sufficient time to process the petition, provide for verification of the signatures, and appoint a monitor.

(4) Once the ombudsman has received a timely filed petition for appointment of an election monitor, the ombudsman shall examine the petition to ensure that all required information is provided and that a sufficient number of voting interests have signed the petition.

(a) If the petition is deficient, the ombudsman shall provide the petitioners with notice of the deficiencies, and petitioners will have 5 calendar days from receipt of such notice to timely correct the petition, or if the deficiencies cannot be corrected, the petition shall be denied and the materials shall be returned to the unit owners petitioning for appointment of an election monitor.

(b) Within 5 calendar days of the determination that a petition is complete and sufficient, the ombudsman shall provide a copy of the petition to the association by certified mail, along with a notice that a petition for appointment of election monitor has been filed with the ombudsman. Where the determination that a petition is complete and sufficient is made within 5 days of a scheduled election, the ombudsman shall immediately provide a copy of the petition to the association upon making such determination of completeness.

(5) Once a petition has been found to be adequate, the ombudsman shall appoint an election monitor as provided by the provisions of Section 718.5012(9), Florida Statutes, and this rule. Any appointment of a division employee shall be subject to the approval of the division director.

(6) The appointed monitor shall review any documents provided by the petitioners or by the association in advance of the scheduled election and shall attend and conduct the election in person.

(7) The monitor shall conduct the election, but where a division employee is appointed as monitor, the employee shall not provide direct advice or suggestions to the association or to individual owners in the course of the election. Each monitor shall submit a report regarding the election to the ombudsman, and to the parties, within 14 days following the date the election is concluded.

(8) Where a division employee has been approved to be appointed as the election monitor, the division shall prepare an itemized statement of costs and expenses and shall submit the statement and a request for reimbursement to the association along with the monitor’s report. The association shall have 30 days in which to reimburse the division. It shall be considered a violation of this rule for an association not to timely reimburse the division for all costs and expenses associated with the election monitoring process.

(9) Where a monitor is appointed who is not a division employee, the division will not enforce the billing and collection of amounts owed to the monitor. Nothing in these rules prohibits a private monitor from requiring the association to pre-pay all or part of the reasonable fees and costs of the monitor.

## 61B-23.0022 Contracts for Bid; Employees.

In accordance with the provisions of section 718.3026, Florida Statutes, contracts with employees of the association shall not be subject to the provisions of that section. For purposes of this rule, a worker shall be considered an employee of an association where the association pays or deducts, for or on behalf of the worker, social security tax, unemployment compensation taxes, and federal withholding taxes.

## 61B-23.0026 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting.

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners other than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the declaration provides that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of section 718.112(2)(k), Florida Statutes, that may recall or remove such board member or members.

## 61B-23.0027 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the condominium documents, 10 percent of the voting interests may call a meeting of the unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “condominium documents” means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled.

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule.

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the condominium documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the condominium documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the condominium documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date when the notice of the recall meeting is mailed or delivered, unless otherwise provided in the condominium documents. If the association is unincorporated, the meeting shall be held within the time required by the condominium documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative’s name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, the specific seat each replacement board member was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of section 718.301, Florida Statutes, and rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of section 718.112(2)(d), Florida Statutes, and rule 61B-23.0021, Florida Administrative Code, to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of section 718.301, Florida Statutes, and rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or,

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

3. Upon certification of the recall by the board; or,

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members by vote at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of section 718.301, Florida Statutes, and rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by rule 61B-23.0021, Florida Administrative Code, on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by section 718.112(2)(d)3., Florida Statutes and rule 61B-23.0021, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board.. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board..

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement board members elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned.

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, shall be included.

## 61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not affect the validity of the recall of a board member or members;

(d) Provide a space for the person signing the written agreement to state his name, identify his unit and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the condominium documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, Florida Statutes, shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board member or the association’s registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a board member, the association’s registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(d), Florida Rules of Civil Procedure; and,

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. Written recall ballots do not expire through the passage of time, however, written recall ballots become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited proxy given by the unit owner(s) of record.

(k) Any rescission or revocation of a unit owner’s written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement;

Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more board members shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provision of section 718.301, Florida Statutes, and rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. As utilized in this rule, the phrase “condominium documents” means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by rule 61B-23.0021, Florida Administrative Code, on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by section 718.112(2)(d)3., Florida Statutes and rule 61B-23.0021, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e. be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement board members elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to duly notice and hold a board meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in section 110.117, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in section 110.117, Florida Statutes, shall be included.

## 61B-23.0029 Electronic Transmission of Notices.

(1) 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.

(2) 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.

(3)(a) 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.

(b) 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.

(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.

(4) 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.

(5) 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.

(6) 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.

## 61B-23.003 Transition from Developer Control.

(1) When an association will operate more than one condominium, unit owners other than the developer are entitled to elect no less than one-third of the members of the board of administrators when they own fifteen percent of the units in any one condominium to be operated by the association. The basis upon which unit owners other than the developer are entitled to elect not less than a majority of the board of administrators is determined according to the percentage of units conveyed to purchasers in all condominiums that will be operated ultimately by the association. The developer is entitled to elect at least one member of the board of administrators as long as it holds for sale in the ordinary course of business the percentage of units provided by law in any one condominium operated by the association.

(2) A developer may establish a transition committee or committees to involve unit owners in an advisory capacity with regard to the operation of the condominium prior to assumption of control of the association by unit owners other than the developer. However, establishment of such committee does not relieve the developer from any obligations under Section 718.301, Florida Statutes.

(3) Association funds shall be used only for association purposes and may not be expended for the purposes of the developer, including but not limited to sales and promotional activities, utilities or other costs for construction activities or repair or replacement which is within the warranty obligations of the developer, nor may association personnel be used for such purposes at association expense

(4) The developer shall pay the costs for the preparation or duplication of the documents required by section 718.301(4), Florida Statutes, to be provided the unit owner controlled association upon transfer of association control, including the costs and accountant's fees incurred in preparing the financial statements required by section 718.301(4)(c), Florida Statutes.

(5) Within 10 business days after the election of the first unit owner, other than the developer, to the board of administration, the developer shall forward to the division, in writing, the name and mailing address of the unit owner board member.

(6) The developer or developer's agent shall obtain a receipt for transfer of condominium documents to the unit owner controlled association. The receipt shall include a listing of all the items for each condominium operated by the association outlined under section 718.301(4), F.S. Said receipt shall contain the date of transfer of the records and shall be signed by both the developer and a non-developer unit owner board member. A copy of said receipt shall be given to the association. Both parties shall retain the receipt for a period of 7 years. Said receipt shall not constitute a waiver of unit owner or association rights with respect to completeness and accuracy of the transfer of condominium documents or preclude administrative remedies available to the division.

(7) (a) For purposes of computing the percentages of units conveyed to purchasers which will entitle unit owners other than the developer to elect not less than a majority of the members of the board of administration, units sold or otherwise transferred in a bulk transfer by the current developer shall be utilized in the above computation for a turnover of control of the association board unless the sale or other transfer is accompanied by an assignment of the developer’s rights to the grantee or transferee. If an assignment of developer rights does not accompany the bulk transfer, in all instances the units sold or otherwise transferred shall be utilized in the computation for a turnover.

(b) As utilized in this rule, the term “bulk transfer” means any sale or other transfer of two or more units in one condominium to the same person, including but not limited to units conveyed through foreclosure, deed in lieu of foreclosure or any other transfer or sale, whether voluntary or involuntary.

(c) As utilized in this rule, the phrase “assignment of developer rights” refers only to a written agreement whereby the current developer expressly transfers to the grantee or transferee all developer rights and existing obligations under the declaration of condominium, including any exhibits thereto; under Chapter 718 of the Florida Statutes, including the provisions of section 718.203, Florida Statutes; and under these rules.

(d) If the transferee or grantee receives an assignment of developer rights, the transferee or grantee shall have the voting rights of the current developer as provided in the declaration, articles of incorporation or association bylaws and the Condominium Act.

(e) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee is not and does not become a developer as defined by rule 61B-15.007, Florida Administrative Code, such transferee or grantee is entitled to vote for a majority of the members of the board of administration.

(f) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee, at the time of such transfer or at a subsequent time becomes a developer as defined by rule 61B-15.007, Florida Administrative Code, such developer is entitled to vote for a majority of the members of the board of administration so long as such developer is offering units for sale in the ordinary course of business as defined in rule 61B-15.007 and subsection 61B-15.0011(6), Florida Administrative Code. If, however, such developer is not offering units for sale in the ordinary course of business as defined in rule 61B-15.007 and subsection 61B-15.001(6), Florida Administrative Code, such developer is not entitled to vote for a majority of the members of the board of administration.

(g) If during the time such developer pursuant to the provisions of paragraph (f) of this rule, is entitled to vote for a majority of the members of the board of administration, such developer is responsible for any violation of the Condominium Act or these rules by the association committed during the time such developer controls the association by voting more than 50 percent of the voting interests of the association. Further, such developer shall provide the association with an audit of the association financial records in the manner provided in section 718.301(4)(c), Florida Statutes, and rule 61B-22.0062, Florida Administrative Code, for the period such developer controls the association regardless of the fiscal period required by subsection 61B-22.0062(1), Florida Administrative Code.

(8) In accordance with section 718.301(1)(d), Florida Statutes, after turnover of control of an association, the developer who relinquishes control may vote in the same manner as any other unit owner. However, the relinquishing developer may not vote for a majority of the board of administration; nor shall the developer vote on matters for which a vote of unit owners other than the developer is allowed or required by Chapter 718, Florida Statutes, or by division rules. For example, the developer may not vote its interests in determining whether to cancel an association agreement under section 718.302, Florida Statutes.

(9) In condominiums created on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration not later than 7 years after recordation of the declaration. In the case of an association which may ultimately operate more than one condominium where the initial condominium operated by the association is created on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board not later than 7 years after recordation of the declaration of the initial condominium. In the case of a phase condominium created pursuant to section 718.403, Florida Statutes, where the declaration submitting the initial phase or phases is recorded on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board not later than 7 years after the recordation of the declaration submitting the initial phase or phases.

## 61B-23.0051 Cable Television Service.

(1) “Cable television service” as used in section 718.115(1)(d)2., Florida Statutes, shall mean the transmission of video programming by a duly franchised cable company, as provided in s. 166.046, Florida Statutes, or as that section may be subsequently renumbered, pursuant to a contract between the association and such duly franchised cable company. For the purposes of this rule, cable television service shall include any master antenna or community antenna television system.

(2) “Legally Blind” as used in section 718.115(1)(b), Florida Statutes, shall mean having central visual acuity of 20/200 or less in the better eye with corrective glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees.

(3) “Hearing impaired,” as used in section 718.115(1)(d)2., Florida Statutes, shall mean:

(a) An individual who has suffered a permanent hearing impairment and is not able to discriminate speech sounds in verbal communication with or without the assistance of amplification devices; or

(b) An individual who has suffered a permanent hearing impairment which is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

(4) A legally blind or hearing impaired unit owner seeking to discontinue cable television service in accordance with section 718.115(1) (d)2., Florida Statutes, shall furnish proof to the board of directors of the association that the individual is legally blind or hearing impaired. The association shall accept as proof of the impairment a statement attesting to such impairment from one of the following:

(a) A licensed physician, audiologist, or speech pathologist;

(b) A state certified teacher of the visually impaired or of the hearing impaired; or

(c) An appropriate state or federal agency.

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# Volunteer Mediation Rules

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## 61B-25.001 Mediation Definitions.

For purposes of Sections 718.501(1)(l) and 719.501(1)(n), F.S, the following definitions shall apply:

(1) "Mediation" means a process whereby a neutral third person acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, for example, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(2) The phrase "mediated a dispute" means that the person as neutral third party assisted parties to a dispute with the goal of reaching a mutually acceptable and voluntary agreement through mediation as described in subsection (1) of this rule. The following shall not be considered as having "mediated a dispute":

(a) Having served as counsel or adviser to a party to a mediation;

(b) Having been a party to a mediation; or

(c) Having participated in mediation as part of training or mentoring.

## 61B-25.002 Volunteer and Paid Mediator Lists.

(1) The division will maintain lists of both volunteer and paid mediators who have met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S, and these rules. The lists will include the name, address, and telephone number of each applicant who has met the statutory and rule requirements for appearing on the lists. Names shall be removed from the lists as provided in this rule.

(2) The division will update the list of volunteer mediators on July 1 of each year by sending a letter to each individual on the list, requesting that the individual advise the division within 30 days if the individual wishes to remain on the list. The division will remove the name of any individual who fails to notify the division in writing within 30 days from the date of the notice that the individual wishes to remain on the list. The removed name will be added to the list again upon written request of the person whose name was removed.

(3) (a) The division will remove from the list of volunteer mediators the name of any person who accepts any compensation or reimbursement for the mediation of a condominium dispute when the mediator was selected from the list or who submits false information in the application or documentation required by rule 61B-25.003, Florida Administrative Code.

(b) The division will remove from the list of paid mediators the name of any person who submits false information in the application or documentation required by rule 61B-25.003, Florida Administrative Code.

(4) The division does not endorse or in any way approve any volunteer or paid mediator appearing on the lists.

## 61B-25.003 Procedure for Applying: Volunteer Mediators.

(1) A person who has met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S, and these rules, and who wishes to be placed on a list of volunteer mediators maintained by the division, shall submit a completed BPR Form 33-035, APPLICATION FOR VOLUNTEER MEDIATOR, incorporated herein by reference and effective 3-18-93, and supporting documentation of training or experience to the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. A copy of BPR form 33-035, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with BPR form33-035, Application for Volunteer Mediator, shall consist of the following:

(a) Verification of the completion of 20 hours of training in mediation techniques. Verification shall consist of a certificate of completion from a training program or a notarized statement from an instructor or entity providing the training which verifies completion of 20 hours of training in mediation techniques or other verifiable evidence of completion of the training requirement; or

(b) Verification of having mediated 20 disputes. Verification shall consist of either of the following:

1. Documentation of having mediated at least 20 disputes in a mediation program such as a County Citizen Dispute Settlement Program; or

2. An affidavit from the applicant attesting to having mediated at least 20 disputes. If an affidavit is provided, it shall be supplemented with notarized statements attesting to the mediations from all parties of at least five disputes mediated by the applicant.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of volunteer mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant's name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met.

## 61B-25.004 Procedure for Applying; Paid Mediators.

(1) A person who has met the requirements of Sections 718.501 (1)(l) and 719.501(l)(n), F.S, and these rules, and is certified by the Florida Supreme Court to mediate court cases in either county or circuit courts, and who wishes to be placed on a list of paid mediators maintained by the division, shall submit a completed DBPR form CO 6000-33-042, APPLICATION FOR PAID MEDIATOR, incorporated herein by referencee and effective 12-2-97, and supporting documentation to the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. A copy of DBPR form CO 6000-33-042, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with DBPR Form CO 6000 33-042, is an acknowledgment from the Florida Supreme Court that the applicant is currently certified by the Florida Supreme Court to mediate cases in either circuit or county courts.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of paid mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant’s name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met. If a person certified as a paid mediator by the division is no longer certified by the Florida Supreme Court to mediate court cases in either circuit or county courts, the person shall immediately so notify the division and the person’s name shall be automatically deleted from the list of paid mediators.

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# MOBILE HOME RULES DEFINITIONS

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**61B-29.001 Definitions.**

## 61B-29.001 Definitions.

For purposes of Rule Chapters 61B-30, 61B-31, 61B-32, 61B-33, and 61B-35, F.A.C., the definitions in this rule shall apply.

(1) “Promoting” means the use of advertising material which describes any aspect of the mobile park or the terms of the lease used in connection with the sale of a new mobile home or a lease of a mobile home lot. Descriptions which are limited to the name and address of a park shall not be deemed promoting.

(2) “Offer” means any advertisement, inducement, solicitation or attempt to encourage any person to enter into a rental agreement or extend or renew an existing rental agreement for a mobile home lot, whether existing or proposed.

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# MOBILE HOME ADVERTISING PROSPECTUS RULE

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## 61B-30.001 Fees.

(1) Fees shall be paid online at or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(2) Annual fee – If the number of mobile home lots in the park changes during the year, the fee shall be paid for the maximum number of mobile home lots owned by the park owner during the year.

(3) Prospectus filing fee — Upon filing the prospectus required by Section 723.011, F.S., the park owner shall pay a prospectus filing fee for each prospectus filed as follows:

(a) If any of the mobile home lots were covered under a Department of Health (DOH) mobile home park permit prior to June 4, 1984, the fee described in Section 723.011(1)(c)2., F.S., shall be based upon the number of mobile home lots required to be covered under a DOH permit at the time of the prospectus filing unless the park owner files a prospectus for a greater number of mobile home lots than were covered under the permit. In that event, the fee shall be based upon the number of lots for which the prospectus is filed.

(b) For parks which obtain a permit on or after June 4, 1984, the filing shall be accompanied by a fee of $10 for each mobile home lot covered under the permit offered for lease with the prospectus; provided that the fee shall not be less than $100. If the park owner wishes to file a prospectus for a greater number of mobile home lots than are covered under the permit, the fee shall be based upon the number of mobile home lots for which the prospectus is filed; provided that the fee shall not be less than $100.

(4) If subsequent to the initial filing described in subsection (3) of this rule, additional mobile home lots become covered by the DOH permit which were not previously included in the prospectus filing, the fee shall be $10 for each additional mobile home lot.

(5) Successors or assigns of a mobile home park may be responsible for payment of any delinquent or due fees, penalties or fines.

## 61B-30.002 Filing and Examination of a Prospectus.

(1) “Filing” occurs when all of the following have been received by the division:

(a) All forms and documents, completed, tabbed, labeled and assembled in accordance with these rules;

(b) The completed Park Owner Prospectus Filing Statement, BPR Form 402, incorporated herein by reference and effective 8-31-94, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(c) The correct filing fees as required by Section 723.011, F.S.

(2) In determining whether a prospectus must be filed pursuant to Section 723.011, F.S., all existing and planned lots, irrespective of whether all lots are currently covered under a Department of Health permit, shall be counted. As used herein, planned lots means all lots platted or otherwise approved by local authorities.

(3) The park owner may enter into rental agreements only for those lots for which fees have been paid and a prospectus has been filed.

(4) A filing may be amended to include additional lots by submitting to the division the following items:

(a) A completed Supplemental Filing Statement, BPR Form 406, incorporated herein by reference and effective 8-31-94, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) The additional filing fees.

(5) If more than one prospectus is filed and approved for use in the park, the park owner shall inform the division which prospectus applies to each of the lots. The information shall be submitted in the following manner:

(a) If known at the time of filing, the information shall be stated in the appropriate blanks in BPR Form 402.

(b) If the park owner does not know at the time of filing which prospectus will be delivered to each lot; or if the information provided in BPR Form 402 changes after filing, the park owner shall, no later than the first day of March and September of each year, submit to the division a listing of each lot number with the corresponding form prospectus identification number assigned by the division. If there have been no changes from the previous reporting, no additional notification is required.

(6) Documents submitted to the Division for filing shall be securely bound and fastened between firm covers. The filing shall be accompanied by the Park Owner Prospectus Filing Statement and the correct filing fees. Exhibits to the prospectus shall be tabbed and labeled on the side. Each label shall identify the exhibit by appropriate word, phrase or abbreviation.

(7) Amendment means any change to the prospectus filing as permitted by Rule 61B-31.001, F.A.C.

(8) Each park owner shall file amendments with the Division for approval no later than 10 days after a change has occurred. The filing shall contain a version of the proposed amendment, that shows the deletions stricken, and the additions underlined or otherwise highlighted. The park owner shall also submit with the amendments the following information on a separate cover sheet:

(a) Name and address of the park to which the amendments apply;

(b) Division file number;

(c) Park owner’s name and address;

(d) Attorney’s name and address, if applicable.

(9) The examination process for a filing, described herein, shall apply to the examination of amendments, except for paragraph 61B-30.002(1)(c), F.A.C.

(10) Amendments shall not be delivered to existing home owners prior to approval by the Division, except that proposed rule changes shall be delivered to home owners as required by Section 723.037. Florida Statutes, and shall be filed with the Division no later than 10 days after the effective date of the changes. All other approved amendments shall be provided to existing home owners no later than 30 days after approval by the Division.

(11) The park owner shall have 45 days from the date of the Division’s notification of deficiencies to correct any deficiencies noted by the Division. The Division shall notify the park owner of the pending rejection and shall provide an opportunity for the park owner to request formal or informal proceedings pursuant to Section 120.57, Florida Statutes, prior to final agency action rejecting the prospectus. If a filing is rejected, a complete refiling of the documents pursuant to the requirements of Chapter 723, Florida Statutes, and these rules, including the payment of filing fees, shall be required prior to entering into additional rental agreements.

(12) Upon resolution of all deficiencies, the park owner shall file with the division a corrected and revised version of the pending prospectus prior to the division’s notification to the park owner that the prospectus is adequate to meet the requirements of chapter 723, Florida Statutes. The division’s notification of approval shall be accompanied by the approved version of the prospectus. Upon receipt of the approved prospectus, the mobile home park owner shall submit a statement in writing for each prospectus that the approved version of that prospectus is the only version which is being distributed.

## 61B-30.006 Procedure for Filing and Use of Advertising.

(1) All advertising, including scripts for radio, telephone and television, used in promoting a mobile home park under the jurisdiction of the division must be filed pursuant to the requirements of section 723.016, Florida Statutes.

(2) "Filed with the division" means that advertising materials and a completed BPR form 403, Advertising Filing Statement, incorporated herein by reference and effective 8-31-94, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030, have been received by the division in the Tallahassee, Florida office. The date of receipt shall constitute the date of filing.

(3) The developer, park owner or mobile home dealer is not required to refile an advertising piece once it has been filed provided there are no changes made to that advertising piece. Changes only in the size of the advertising piece shall not be considered a change.

(4) Advertising filed with the division may provide blank spaces for dollar amounts and the number of available lots if it clearly indicates the type of information to be included. For example, a blank space for rent may be preceded by a dollar sign.

(5) In determining whether advertising materials violate Section 723.016,F.S. or these rules, the Division shall consider both explicit representations and reasonable inferences created by such material. To determine whether misrepresentations or misleading impressions are made, the Division shall review the advertising materials in their totality.

(6) Advertising shall be consistent with the disclosures in the prospectus required by Section 723.012,F.S.

(7) Advertising shall not use such terms as “minutes away” , ”short distance” , “only miles” , “near” or similar terms to indicate distances unless the actual distance in road miles is used in conjunction with such terms.

(8) Advertising shall not contain statements, photographs, or sketches relating to facilities for recreation, sports or other conveniences which are not presently in existence or located in the park unless it is clearly stated that such facilities are merely proposed if they do not exist; or, if they are not located in the park, a statement to that effect and the actual distance thereto in road miles is stated.

(9) Forecasts of future events or population trends contained in advertising shall be based upon verifiable facts and shall be pertinent to the offering.

(10) Any reference to a guarantee must specifically state what is guaranteed.

(11) The advertising shall not represent that the lot rental amount or any part of the lot rental amount of the lessee will not increase unless al financial obligations of the lessee are guaranteed not to increase or a conspicuous statement is made disclosing that the lessee will be required to pay other charges which are not guaranteed.

## 61B-30.008 Provider Filing and Curriculum for Educational and Training Programs.

(1) Anyone seeking to be a division approved mobile home education provider shall file with the division the educational materials required by Section 723.006(14)(a), F.S.

(2) All materials must be submitted to the division via e-mail to CTMH.BdMbrCertProviders@myfloridalicense.com, by providing access to web-based training programs, or in either printed form or CD ROM format to the following address:

Department of Business and Professional Regulation

Division of Florida Condominiums, Timeshares, and Mobile Homes

2601 Blair Stone Road

Tallahassee, FL 32399-1030

(3) Programs shall cover at least four of the following topics in order to meet the requirements of an educational curriculum for a mobile home education program as provided in Section 723.006(14), F.S.:

(a) Homeowners’ Association statutory rights and regulatory responsibilities to the association and the mobile home owners.

(b) Elections.

(c) Financial reporting.

(d) Association operations.

(e) Records maintenance, including mobile home owner access to records.

(f) Dispute resolution.

(g) Homeowners’ Association Formation.

(4) Programs and materials shall not contain editorial comments.

(5) Within 45 days from receipt of the materials, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 45 days from receipt of the materials, the materials are deemed approved.

(6) The provider shall have 45 days from the date of the division’s notification of deficiencies to correct such deficiencies. If the deficiencies are not corrected within the 45-day period, the division shall reject the filing.

(7) Within 20 days from receipt of the corrections to the noted deficiencies, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 20 days from receipt of the corrections, the materials are deemed approved.

(8) Approved materials may be provided to participants via web-based training programs, seminars, or printed media.

(9) The division will maintain a list of approved programs and providers on the Department of Business and Professional Regulation’s website at http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html.

(10) The division reserves the right to require changes to approved education and training programs.

(11) The provider will issue a certificate of completion to a board member who has successfully completed the approved educational curriculum

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MOBILE HOME PROSPECTUS AND RENTAL AGREEMENT RULE

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[61B-31.001 Prospectus and Rental Agreement.](#_Toc334014624)

## 61B-31.001 Prospectus and Rental Agreement.

(1) The prospectus shall clearly describe all matters required by Chapter 723, Florida Statutes, and shall not contain other information except as permitted by the Division to fully and fairly disclose all aspects of the park and the offer.

(2) Subject to the provisions of Section 723.011(3), Florida Statutes, if the park is to be developed in defined sections, the information required in the prospectus may be described by section.

(3) With regard to a tenancy in existence on June 4, 1984, the prospectus shall contain the same terms and conditions as rental agreements which were required to be offered pursuant to Section 83.760, Florida Statutes (1983), and any provisions required by Chapter 723, Florida Statutes, not inconsistent therewith. A copy of each form of the existing rental agreements identified by the lots to which it applies shall be included in the prospectus filing filed with the Division. The Division will not as part of the examination of the prospectus investigate to determine if the content of the prospectus contains the same terms and conditions as the rental agreements which were required to be offered. If it is later determined that the prospectus varies from the offered rental agreements, an amendment to the prospectus will be required.

(4) The prospectus distributed to a home owner or prospective home owner shall be binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the following circumstances:

(a) Amendments consented to by each affected home owner and the park owner.

(b) Amendments to reflect new rules or rules that have been changed in accordance with procedures described in Section 723.037, F.S., and the prospectus.

(c) Amendments to reflect changes in the name or address of the owner of the park, name or address of the mobile home park or the name or address of the park manager or management company.

(d) Amendments to reflect changes in zoning.

(e) Amendments to reflect a change in the person authorized to receive notices and demands on the park owner's behalf.

(f) Amendments to reflect changes in the entity furnishing utility or other services.

(g) Amendments required by the Division.

(h) Amendments required as a result of revisions of Chapter 723, F. S.

(i) Amendments to add, delete or modify user fees for homeowners, so long as the park owner does not violate Section 723.031, F.S. by charging a user fee for a service previously included in lot rental amount unless a corresponding reduction in lot rental amount is provided.

(j) Amendments to correct scrivener’s errors.

(k) Amendments to reflect changes to the mobile home park property description due to a change in land use, condemnation or other legal action which changes the mobile home park property or a portion thereof.

(l) Amendments made to conform the prospectus to requirements of federal, state and local government ordinances, statutes, and regulations, including, but not limited to, the Fair Housing Act, the Americans with Disabilities Act, or the Telecommunications Act of 1966, where there is no charge to the home owner, except as provided in Section 723.031, F.S.

(m) Amendments to reflect changes in facilities or structural amenities after a natural disaster, as long as the requirements of Section 723.037, F.S. are met.

(n) Amendments to revise, renew, or extend an underlying ground lease.

(o) Amendments to reflect reduction in services or utilities in accordance with the procedures described in Section 723.037, F.S.

(p) Amendments to describe new facilities, services or utilities in the park.

(5) The park owner shall describe in the prospectus the manner in which lot rental amount or user fees may be raised as follows:

(a) In the case of lot rental amount, a statement that the mobile home owner shall be notified of the increase at least 90 days prior to the increase. In the case of user fees, a description of the notice will be provided.

(b) Disclosure of all components of lot rental amounts and disclosure of all user fees to be paid by the home owner. Each type of charge shall be separately listed. The disclosure of all charges except user fees, shall appear in one section of the prospectus. User fees shall be disclosed in a separate section immediately following the section relating to lot rental amount.

(c) A description of all factors, including cost where applicable, for each type of charge which may result in an increase of those charges to the home owner. The factors shall be preceded or followed by a statement that an increase in one or more of the factors may result in an increase in the lot rental amount or user fees.

(d) If the home owner is responsible for pass-through charges, a statement of that fact and a description of the manner in which the pass-through charges will be assessed. The manner shall include the method of allocating the charges.

(6) The current dollar amount of each type of charge shall also be stated in the prospectus and rental agreement. The park owner may provide blank spaces for the required amounts and write in the amount prior to delivery to the home owner.

(7) If there are user fees, a copy of the user fee agreement shall be included as an exhibit to the prospectus.

(8) For those rental agreements in effect on June 4, 1984, the annual period shall commence with the effective date of any change initiated by the park owner on or after June 4, 1984; or, if a written agreement was then in effect, the duration period stated in the rental agreement. Initial tenancies commencing on or after June 4, 1984, may be for a period of less than one year where the park owner elects to have the term of all rental agreements within the park expire on the same date. Initial tenancy, as used herein, shall mean neither a rental agreement nor occupancy occurred prior to June 4, 1984.

(9) The park owner may use more than one form of the prospectus in the park. Each form prospectus shall be filed with the Division as a separate filing.

(10) The last page of the prospectus shall contain the date the prospectus is determined by the Division to be adequate to meet the requirements of Chapter 723, F. S., and an identification number assigned by the Division and the lot number to which the prospectus applies. If the prospectus has been revised to include amendments as described in this rule, the date shall be the original approval date and the latest revision date.

(11) Only a prospectus which has been determined by the Division to meet the requirements of the Statutes and these rules may be delivered to a mobile home owner.

(12) The park owner shall deliver the prospectus to existing home owners prior to the renewal of their rental agreements, or prior to entering into a new rental agreement, or prior to increasing the lot rental amount. Once a home owner has been given a prospectus, the park owner shall not be required to provide another prospectus but shall provide amendments, as described in Rule 61B-30.002, F.A.c., and this rule.

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MOBILE HOME MEDIATION RULES

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[**61B-32.002 Notice of Lot Rental Increase; Reduction in Services or Utilities;   
or Change in Rules and Regulations.**](#_Toc334014859)

[**61B-32.003 Designation of Homeowners' Committee.**](#_Toc334014860)

[**61B-32.004 Meeting Between Park Owner and Homeowners' Committee.**](#_Toc334014861)

[**61B-32.0056 Appointment of a Mediator and Mediation Fees.**](#_Toc334014862)

## 61B-32.002 Notice of Lot Rental Increase; Reduction in Services or Utilities; or Change in Rules and Regulations.

(1) The provisions of section 723.037, F.S.., apply to mobile home subdivisions, except for increases in maintenance fees.

(2) A copy of the notice shall be retained by the park owner or subdivision developer with a dated written statement signed by the park owner or subdivision developer certifying the date the notice was given to all affected homeowners in the park or subdivision and the board of directors of the homeowners' association if one has been established. If all notices are mailed, the park owner or developer may retain a post office certificate of mailing in lieu of the written statement.

## 61B-32.003 Designation of Homeowners' Committee.

(1) Any homeowner or group of homeowners may obtain the approval of the required homeowners to the designation of a homeowners' committee either at a meeting, by agreement in writing, or a combination thereof.

(2) If a mobile home or subdivision lot is owned jointly, the owners of that mobile home or subdivision lot shall be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. A majority shall constitute any number greater than 50 percent of the total.

(3) The homeowners' association or committee shall retain records to verify the selection of the committee by a majority of the affected homeowners or the board of directors of the association. The records shall be retained until the dispute is resolved or the mediation process described in Section 723.037, F. S., has been completed, or, in the case of a homeowners' association, for not less than 7 years.

## 61B-32.004 Meeting Between Park Owner and Homeowners' Committee.

(1) The park owner or subdivision developer shall make and maintain a written record of the reasons for the increase in lot rental amount or reduction in services or utilities or changes to rules and regulations as applicable, which shall be as specific as the explanation required by subsection 61B-32.004(2), Florida Administrative Code, and which shall be retained for a period of 3 years.

(2) At the meeting required by section 723.037(4), F.S. , the park owner or subdivision developer shall in good faith disclose and explain all material factors resulting in the decision to increase lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed. The park owner or subdivision developer may not limit the discussion of the reasons for the change to generalities only, such as, but not limited to, increases in operational costs, changes in economic conditions, or rents charged by comparable mobile home parks. For example, if the reason for an increase in lot rental amount is an increase in operational costs, the park owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased and the amount of the decrease. If an increase is based upon the lot rental amount charged by comparable mobile home parks, the park owner shall disclose the name, address, lot rental amount and any other relevant factors concerning the mobile home parks relied upon by the park owner.

(3) If an agreement is reached between the committee and the park owner or subdivision developer, the terms of the agreement shall be stated in writing and signed by the committee and the park owner or subdivision developer.

(4) If an agreement is not reached in the meeting, the homeowners’ committee may petition the division to initiate mediation by mailing or delivering the following items to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030 within 30 days after the meeting required by section 723.037(4), F.S.:

(a) A completed BPR form 34-001, PETITION FOR MEDIATION BY HOMEOWNERS, incorporated herein by reference and effective 1-19-97, which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) A copy of the written designation required by Section 723.037(5), F.S., which shall include lot identification for each signature; and

(c) A copy of the notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations which is being challenged as unreasonable; and,

(d) A copy of the records which verify the selection of the homeowner’s committee in accordance with Rule 61B-32.003, Florida Administrative Code, and Section 723.037(4), Florida Statutes;

(5) (a) Mediation will not be initiated pursuant to section 723.037(5)(a), Florida Statutes, if the following items are not mailed or delivered to the division within 30 days after the date of the meeting required by section 723.037(4) Florida Statutes:

1. Completed BPR form 34-001; and

2. a copy of the written designation required by paragraph (4)(b) of this rule and section 723.037(5), Florida Statutes.

(b) A petition that does not include the items identified in paragraphs (4)(c) and (d) of this rule or the lot identification required by paragraph (4) (b) of this rule shall be considered deficient. The division will notify the committee in writing of the deficiency. The committee shall have 14 days after the date of the notice to mail or deliver to the Division corrections of the deficiencies. If the deficiency corrections are not mailed or delivered within 14 days after the date of the notice, mediation will not be initiated pursuant to section 723.037(5)(a), Florida Statutes. A petition will be considered received pursuant to section 723.038(4), Florida Statutes. When all items required by this rule have been received and all deficiencies have been corrected.

(6) If the homeowners’ committee petitions for mediation, a copy of the four items required by subsection (4) of this rule shall be furnished to the park owner by Certified U.S. Mail, Return Receipt Requested, at the time the petition is filed with the Division. Notwithstanding this requirement, a mediator will be appointed within the time required by section 723.038(4), Florida Statutes.

(7) A decision by the Division regarding the sufficiency of a petition to initiate mediation does not constitute an adjudication of any issue arising under Section 723.037, Florida Statutes. Any dispute concerning the applicability of Section 723.037(6), Florida Statutes, must be submitted to a court of competent jurisdiction in the event that judicial proceedings are initiated.

(8) The park owner may petition the division to initiate mediation by mailing or delivering the following items to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030, within 30 days after the date of the meeting required by section 723.037(4), F.S.:

(a) A completed BPR form 34-002, PETITION FOR MEDIATION BY PARK OWNER, incorporated herein by reference and effective 1-19-97, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030; and,

(b) A copy of the notice or notices of the lot rental increase, reduction in services or utilities, or change in the rules and regulations identifying the issue for mediation.

(9) Mediation will not be initiated pursuant to section 723.037(5)(a), Florida Statutes, if a completed BPR Form 34-002, PETITION FOR MEDIATION BY PARK OWNER, is not mailed or delivered to the division within 30 days after the date of the meeting required by section 723.037(4), Florida Statutes.

(10) A petition that does not include the items identified in paragraph (8)(b) of this rule shall be considered deficient. The division will notify the park owner in writing of the deficiency. The park owner shall have 14 days after the date of the notice to mail or deliver to the division corrections of any deficiency. If the deficiency corrections are not mailed or delivered to the division within 14 days after the date of the notice, mediation will not be initiated pursuant to section 723.037(5)(a), Florida Statutes. A petition will be considered received pursuant to section 723.038(4), Florida Statutes, when all items required by this rule have been received and all deficiencies have been corrected.

(11) If the park owner petitions for mediation, a copy of the two items required by subsection (8) of this rule shall be furnished by the park owner to the homeowners’ committee by Certified U.S. Mail, Return Receipt Requested, at the time the petition is filed with the division. Notwithstanding this requirement, a mediator will be appointed within the time required by section 723.038(4), Florida Statutes.

## 61B-32.0056 Appointment of a Mediator and Mediation Fees.

(1) In order to be appointed by the division, a mediator meeting the requirements of section 723.038(2), F.S., must file an application with the division. The application must be submitted on BPR form 34-003, APPLICATION FOR MEDIATORS, incorporated herein by reference and effective 1-19-97. The form may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

(2) If a mediator in the circuit in which the mobile home park is located is unavailable from both a list of circuit court mediators in the judicial circuit and from, the Florida Growth Management Conflict Resolution Consortium list, the division will appoint a mediator from outside the circuit, beginning with circuits which are located in the same geographic region.

(3) The division will select a mediator from the following list using an alphabetical rotation:

(a) An alphabetical list of circuit court mediators by judicial circuit consisting of mediators willing to mediate in that judicial circuit.

(b) An alphabetical list of mediators maintained by the Florida Growth Management Conflict Resolution Consortium.

(4) Unless otherwise agreed to by the parties, the first mediation conference shall be held within 60 days of the appointment of the mediator by the division.

(5) Notice. Within 10 days after the appointment of the mediator, the mediator shall schedule and notify the parties in writing of the time, date and place of the mediation conference.

(a) Conclusion of Mediation. Mediation shall be completed within 45 days of the first mediation conference unless agreed to by both parties. The mediator shall notify the division in writing that mediation is concluded by submitting a completed BPR form 34-005, MEDIATION REPORT, incorporated herein by reference and effective 1-19-97, and which may be obtained by writing to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. The report shall be mailed or delivered to the division within 10 days after the conclusion of the mediation. Conclusion means the mediation process has ended by either full or partial impasse or agreement on the issues or failure of either party to appear at the mediation conference.

(b) Waiver or Deferral of Mediation. Prior to the mediation conference, any party may withdraw its petition for mediation. The party withdrawing its petition shall notify all interested parties, the mediator and the division.

(c) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference, notwithstanding rule 1.710(a), Florida Rules of Civil Procedure. No further notification is required for parties present at the adjourned conference.

(d) Counsel. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients. In the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel.

(e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel.

(6) Any party may request the division to replace a mediator. Upon request from either party for replacement of an appointed mediator, the division will appoint a qualified replacement in accordance with this rule. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a mediation request for replacement is pending.

(7) In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. As used in these rules, “legal holiday’ means those days designated in Section 110.117, Florida Statutes.

(8) (a) FEES. For mobile home parks located in Dade County, the mediator shall collect an all inclusive fee of $175 for up to 2 hours, and above 2 hours an additional fee of $85 per hour, or any fraction of an hour.

(b) For mobile home parks located in all counties other than Dade County and the Sixth Judicial Circuit, the mediator shall collect an all inclusive fee of $125 per hour, or any fraction of an hour.

(c) For mobile home parks located in the 6th Judicial Circuit, the mediator shall collect an all inclusive fee of $125 per hour, prorated by one quarter hour increments.

(d) Any mediation fees incurred by a mediator subsequent to appointment by the division shall be the responsibility of the parties. The parties shall be responsible for paying the mediator fee in accordance with this rule.

(e) Mediation fees shall be based on time utilized for scheduling and mediation conference or conferences.

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# Timeshare Plans

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**61B-37.001 Definitions.**

For purposes of sections 721.075, 721.11, and 721.111, Florida Statutes, and these rules, the following definitions apply:

(1) "Additional material" means any material except material whose primary effect is to create a new prize and gift promotional offer, substantially different from a previously filed offer, or to extend the expiration date of a previously filed offer more than three years beyond its original approval date.

(2) "Aggregate represented value" or "represented value" means a numerical value or percentage greater than zero for which supporting documentation has been furnished to the division prior to any offering of the incidental benefit.

(3) "Days" shall be calculated in the manner specified in chapter 61B-39, F.A.C.

(4) "Filed with the division" means that written materials, including facsimile and electronic filing, if appropriate, have been received by the division in the Tallahassee, Florida office and the date of receipt shall constitute the date of filing.

(5) "Item" means a timeshare interest, a gift or prize premium, a product or service, or all of the above, as the context requires.

(6) "Lodging Certificates" means any promotion, arrangement, plan, scheme or other device, whether evidenced by contract, certificate, license, membership agreement, security, use agreement or otherwise, whereby a prospective timeshare purchaser is offered complimentary or discounted accommodations or facilities at any hotel, motel, campground, timeshare resort or other similar establishment regardless of where located, except that lodging certificates shall not mean the offering of the complimentary or discounted use of accommodations or facilities at a timeshare project by a developer, seller or promotional entity in connection with the offer for sale of a timeshare interest at such resort.

(7) "Promotional Entity" means the developer or seller of a time-share period, or any officer, agent or employer of such developer or seller, or any business entity of whatever nature which has entered into a contractual relationship with such developer or seller, which person or entity is responsible to such developer or seller for overseeing, administering or operating a prize and gift promotional offer.

(8) "26 prizes" means that the sum total of all individual prizes offered plus the quantity of individual prizes offered plus all of the distinguishing features thereof, including types, categories, sizes, and parts, shall not exceed twenty-six.

(9) "Vacation Certificates" means lodging certificates which include complimentary or discounted transportation, meals or other material benefits in addition to the mere use of accommodations and common motel, hotel, or campground facilities.

(10) "Verifiable Retail Value" means either the price charged by a national or regional retailer for an identical or substantially similar item or an amount equal to no more than twice the cost of the item to the promotional entity. The verifiable retail value of coupon or discount books shall be the maximum amount of savings to the prospective purchaser assuming that all of the coupons or discounts are actually used.

## 61B-37.002 Advertising Material.

(1) In evaluating whether oral statements or advertising material, including prize and gift promotional offers, violate the terms of Section 721.11(4), Florida Statutes, the Division shall consider both explicit representations and reasonable inferences created by such materials or statements. To determine whether representations are misleading, the Division shall review the advertising materials in their totality.

(2) The developer of the timeshare plan must file all advertising material with the division, including prize and gift promotional offers, prior to use, and shall accompany such filing with [DBPR Form TS 6000-12, Filing Statement for Advertising Material,](http://www.myfloridalicense.com/dbpr/lsc/documents/6000_12_adv_fil_st.pdf)DBPR Form TS 6000-12, Filing Statement for Advertising Material, incorporated herein and effective12-18-01, a copy of which may be obtained at the address reference in subsection 61B-39.002(4), F.A.C. At the request of the developer, the division shall review the advertising material and notify the developer of any deficiencies within 10 days after the filing advising the developer of specific deficiencies in the advertising material that must be corrected. Where additional or corrected material is submitted to modify previously filed advertising material, including advertising submitted in response to a deficiency notice from the division, such material must be filed with the division prior to use of the modified advertising material.

(3) Notwithstanding the provisions of subsection (2), a developer may use a piece of advertising material prior to filing that merely corrects material previously filed with the division if the correction is unrelated to any deficiency letter issued by the division. A piece of advertising material corrects previously filed material when it only cures typographical or printing errors that do not change the meaning of the previously filed material. Such material shall be filed with the division at the time of use.

## 61B-37.004 Prize and Gift Promotional Offers.

(1) Contents of Filing. In addition to the general filing requirements of sections 721.11 and 721.111(4), Florida Statutes, and other applicable chapter 61B-37 rules, each filing with the division of a prize and gift promotional offer shall comply with the following specific requirements:

(a) In instances where a manufacturer's suggested retail price must be disclosed, this figure shall be evidenced by a letter from the manufacturer of the item stating its suggested retail price or by the manufacturer's printed price list. Where disclosure of a verifiable retail value is required, this value may be evidenced by providing the division with a page from a national or a regional retail catalog depicting the item, or a comparable item, properly used as a reference of retail value or by providing the division with copies of the actual purchase and invoice agreements governing the purchase of the item.

(b) In disclosing the terms and conditions and other information concerning the use of lodging or vacation certificates, and in providing reasonable assurances that the obligations thereunder will be met, the developer shall include the following information:

1. The name and address of the business entity or entities creating and distributing the lodging or vacation certificates;

2. A copy of the lodging or vacation certificate;

3. The name and location of the resort, hotel, motel, time-share project or other entity providing benefits under the vacation or lodging certificate.

4. A letter to the division from the developer verifying that a bona fide agreement exists, between the certificate supplier and the developer.

(2) Filing fees. Each developer shall provide the division with a separate filing and filing fee for each prize and gift promotional offer as specified in Section 721.111(4), (6), Florida Statutes. Notwithstanding the above, a developer may, without paying an additional filing fee, file a prize and gift promotional offer which merely corrects an offer previously filed with the division. A prize and gift promotional offer corrects a previously filed offer when it only cures typographical or printing errors that do not change the meaning of the previously filed offer.

(3) Advertising disclosures.

(a) In describing the prize, gift or other item that a prospective purchaser will receive, advertising material shall describe, where applicable, the item's dimensions, material and construction, volume, warranties, guarantees, brand name, and method of operation.

(b) In describing vacation or lodging certificates, the advertising material shall fairly disclose, where applicable:

1. The location and a fair accurate description of the lodging facility. If proximity to any area attraction is mentioned, the distance of the attraction from the lodging facility shall be fairly described.

2. The number of days and nights lodging offered;

3. The number of persons included without additional charges;

4. Whether a sales presentation is required to validate the certificate;

5. The expiration date of the certificate;

6. The existence and amount of any charges to the recipient.

7. Whether the recipients must use a credit card to make their reservations.

(c) In disclosing the rules, terms, requirements, and preconditions governing the use of a vacation or lodging certificate, the certificate shall contain a section labeled "Terms and Conditions," or language of similar import, which shall include the following:

1. Any eligibility requirements such as age, employment, residency, or marital status;

2. Any expiration date; and

3. Any additional charges.

(4) Unavailability of accommodations under the vacation or lodging certificates. Where, through no fault of the developer of the time-share plan, any entity which is to provide lodging or other services under the vacation or lodging certificate fails to do so, the developer must offer recipients of such certificates the choice of receiving either a refund of any monies paid therefor or pursuant thereto, or of receiving comparable lodging and services subject to the same terms and conditions as specified in the vacation or lodging certificate. After the provider of the lodging or other services fails to honor the terms of the vacation or lodging certificate, the developer shall immediately cease distribution of any vacation or lodging certificates offering lodging or services at the unavailable facility.

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# Timeshare Accounting and Financial Reporting Requirements Scope; Books and Financial Records; Budgets; Guarantees; Reserves; Financial Reporting

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[**61B-40.007 Financial Reporting Requirements.**](#_Toc333987026)

## 61B-40.001 Definitions---

For purposes of Chapter 721, Florida Statutes, and Chapter 61B-40, Florida Administrative Code, the following definitions shall apply:

(1) "Books and financial records" as stated in section 721.13(3)(d), Florida Statutes, means any records that identify, measure, record, or communicate financial information whether the records are maintained electronically or otherwise.

(2) "Capital contribution" means cash, property or services contributed to a timeshare plan by its developer or purchasers, which includes amounts contributed to replacement reserves.

(3) "Capital expenditure" means any expenditure of funds for:

(a) the purchase of an asset or capital reserve item whose useful life is greater than one year;

(b) the replacement of an asset or capital reserve item whose useful life is greater than one year; or

(c) the addition, major repair of or improvement to an asset or capital reserve item that extends the useful life of the previously existing asset for a period of greater than one year. This definition shall not preclude the managing entity from establishing its own capitalization policies.

(4) "Deferred maintenance" means any maintenance or repair that:

(a) will be performed less frequently than yearly; and

(b) will maintain the useful life of an asset or capital reserve item.

This definition shall not preclude the managing entity from establishing its own capitalization policies.

(5) "Fiscal period" means a period of time for which financial statements are prepared, such as a month, quarter or year.

(6) "Fiscal year" means a period of 12 consecutive months chosen by a timeshare plan as the accounting period for annual reports.

(7) "Funds" means money and negotiable instruments including, for example, cash, checks, notes, and other investments authorized by law.

(8) "Reserve fund balance" means the cumulative excess or deficit of reserve revenues over reserve expenses for a reserve category at a particular point in time.

(9) "Reserves" means categories of funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the categories roof replacement, building painting, pavement resurfacing, replacement of unit furnishings and equipment and any other component of the facilities whose useful life is less than that of the overall structure, as required by section 721.07(5)(t) 3., Florida Statutes. Funds that are not restricted as to use shall not be considered reserves within the meaning of this rule regardless of the label attached to such items.

(10) "Timeshare condominium" means a condominium in which any unit is a "timeshare unit" as defined in section 721.05, Florida Statutes.

## 61B-40.002 Scope.

These rules apply to all condominium and non-condominium timeshare plans and to all units in any timeshare condominium. Chapter 61B-22, Florida Administrative Code, shall not apply to timeshare condominiums.

## 61B-40.003 Books and Financial Records; Fiscal Year.

(1) Maintenance of books and financial records. The books and financial records of every timeshare plan shall be maintained in sufficient detail to permit determination of the revenues and expenses attributable to separate component sites, condominiums, associations, categories of funds such as operating, reserve or property tax, and other revenue generating activities within a timeshare plan.

(2) Separate books and financial records required. Every managing entity shall maintain separate books and financial records as follows:

(a) If the common expenses of a component site are not common expenses of the multisite timeshare plan, the managing entity shall maintain books and financial records for such component site separately from the books and financial records of the multisite timeshare plan;

(b) The managing entity of a multicondominium timeshare plan shall maintain separate accounting records for the multicondominium association and for each condominium operated by the association, Multicondominium associations created prior to July 1, 2000, that do not create separate ownership interests of the common surplus of the association for each unit, as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall not maintain separate fund balances for the association, and shall allocate all association revenues and expenses to each condominium operated by the association pursuant to the provisions of each condominium’s respective declaration;

(c) For timeshare plans engaged in activities that generate nonassessment revenues, the managing entity shall maintain accounting records in sufficient detail to permit the determination of the revenues and expenses of each such revenue generating activity.

(3) Fiscal year. Every timeshare plan shall establish a fiscal year and shall document the fiscal year in the books and records of the timeshare plan. Such fiscal year shall be the same as the budget year.

## 61B-40.004 Budgets.

(1) Required elements for estimated operating budgets. The proposed and adopted budget for each timeshare plan shall:

(a) Be stated on an annual basis;

(b) Disclose the fiscal year for which the budget will be in effect;

(c) Show the total assessment for each use availability period or ownership interest according to its proportionate share of ownership or as allocated by the timeshare instrument, as applicable;

(d) Include a good faith estimate of all revenues of the timeshare plan. Revenue classifications, such as interest, assessments, and other categories shall be shown separately. If applicable, the following items shall be included in the estimated revenues section of the budget:

1. Estimated non-assessment revenues; and

2. Estimated common surplus as of the beginning of the period for which the budget will be in effect.

(e) Include a good faith estimate of all common expenses or expenditures of the timeshare plan including the categories set forth in section 721.07(5)(u)3., Florida Statutes. The following minimum reserve disclosures for proposed budgets are required:

1. Reserves for capital expenditures and deferred maintenance as required by section 721.07(5)(u)3., Florida Statutes, shall be included in the proposed annual budget, or as a separate reserve budget, stating each such reserve category for capital expenditures and deferred maintenance as a separate line item and with the following minimum disclosures:

a. The total estimated useful life of the asset;

b. The estimated remaining useful life of the asset;

c. The estimated replacement cost or deferred maintenance expense of the asset;

d. The estimated fund balance of the asset as of the beginning of the period for which the budget will be in effect; and

e. The developer's total funding obligation, as if all timeshare periods are sold, for each converter reserve account established pursuant to section 721.03(3)(e), Florida Statutes, if applicable.

2. Categories of expense that are restricted as to use shall be stated in the reserve portion of the budget. Categories of expense that are not restricted as to use shall be stated in the operating portion of the budget.

(f) Include estimated common deficits as of the beginning of the period for which the budget will be in effect as a separate line item of the budget.

(2) Condominium associations operating both timeshared units and non-timeshared units. The budget for an association operating both whole condominium units and timeshared condominium units shall provide separate schedules, conforming to the requirements for budgets as stated in this rule, of all estimated common expenses related to the underlying condominium units and all of the estimated common expenses related to the timeshare plan, including any applicable reserves for deferred maintenance and capital expenditures.

(3) Non-condominium timeshare plans with units to be used on a non-timeshared basis. The budget for a non-condominium timeshare plan consisting of timeshared units and non-timeshared units shall provide separate schedules, conforming to the requirements for budgets as stated in this rule, of all estimated common expenses related to the non-timeshared units and all of the estimated common expenses related to the timeshared units, including any applicable reserves for deferred maintenance and capital expenditures.

(4) Condominium timeshare plans with limited common elements. If a condominium association maintains limited common elements at the expense of only those purchasers entitled to use the limited common elements pursuant to section 718.113(1), Florida Statutes, the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the limited common elements, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may aggregate the maintenance expense of any limited common elements for which the declaration provides that the maintenance expense is to be shared by a group of purchasers.

(5) Non-condominium timeshare plans that allocate common expenses to certain purchasers based on exclusive use rights. If a non-condominium timeshare plan maintains facilities of the timeshare plan at the expense of only those purchasers entitled to use those facilities the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the facilities, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may aggregate the maintenance expense of any facilities for which the timeshare instrument provides that the maintenance expense is to be shared by a group of purchasers.

(6) Multicondominium timeshare plans. The managing entity of a Multicondominium timeshare plan shall:

(a) Provide a separate schedule of estimated expenses specific to each condominium such as the maintenance, deferred maintenance, repair or replacement of the common elements of that condominium;

(b) Provide a separate schedule of estimated expenses of the association that are not specific to a condominium such as the maintenance, deferred maintenance, repair or replacement of the property serving more than one condominium;

(c) Multicondominium associations, created after June 30, 2000, or multicondominium associations that have created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include the estimated common surplus of the association and the condominium as a line item in the revenue section of the respective budgets; and

(d) Multicondominium associations created after June 30, 2000, or multicondominium associations that have created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each purchaser’s share of the estimated expenses of the association, referred to in subsection (b) of this rule, which shall be shown on the individual condominium budgets. Multicondominium associations created prior to July 1, 2000, that have not created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall disclose each condominium's share of the estimated expenses of the association, as referenced in subsection (b) of this rule.

(7) Phase condominium timeshare plans. By operation of law, the annual budget of a phase condominium created pursuant to section 718.403, Florida Statutes, shall automatically be adjusted when phases are added to a condominium to incorporate the change in proportionate ownership of the common elements by the purchasers and to incorporate any other changes related to the addition of phases in accordance with the declaration of condominium. The adjusted annual budget shall be effective on the date that the amendment to the declaration adding a phase to a phase condominium is recorded in the official records of the county in which the condominium is located. Notwithstanding the requirements of subsection (8) of this rule, the board shall not be required to follow the provisions of section 718.112(2)(e), Florida Statutes, unless, as a result of the budget adjustment, the assessment per use availability period or ownership interest has changed.

(8) Budget amendments for condominium timeshare plans. The association of a condominium timeshare plan may amend a previously approved annual budget. In order to do so the board of administration shall follow the provisions of section 718.112(2)(e), Florida Statutes. For example, the board shall mail a meeting notice and copies of the proposed amended annual budget to the purchasers not less than 14 days prior to the meeting at which the budget amendment will be considered.

(9) Authorized level of assessments. Assessments charged to a purchaser pursuant to an annual budget shall be based on the adopted budget and the purchaser's proportional obligation for sharing common expenses as stated in the timeshare instrument.

(10) Budgets are a part of the official records. A copy of the proposed and adopted budgets shall be maintained as part of the books and financial records of the timeshare plan.

## 61B-40.005 Guarantee of Common Expenses Under Sections 718.116(9) and 721.15(2), Florida Statutes.

(1) Establishment of the guarantee. If a guarantee is not established in the timeshare documents any agreement establishing a guarantee shall be effective only upon the approval of a majority of the non-developer timeshare purchasers. Such approval shall be documented in the books and financial records of the timeshare plan.

(2) Guarantee period. The guarantee period shall be indicated by a specific beginning and ending date. The guarantee may provide for different dollar amounts for different fiscal years within a guarantee period.

(a) The ending date shall be the same for all of the purchasers including the purchasers in different phases of phase condominiums; and

(b) The guarantee may provide for more than one fiscal year with different dollar amounts for each such fiscal year.

(3) Authorized level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each use availability period or ownership interest as identified in the timeshare documents. Regardless of the stated dollar amount of the guarantee, assessments charged to a purchaser pursuant to an annual budget shall not exceed the purchaser's obligation based on the adopted budget and the purchaser's proportional obligation as stated in the timeshare documents.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds of the timeshare plan are not sufficient to permit full and timely payment of all common expenses, including the full and timely funding of reserves unless properly waived, the guarantor shall advance sufficient cash to the managing entity at the time such payments are due; and

(b) Capital contributions received from purchasers shall not be used for the payment of common expenses.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation at the end of the guarantee period shall be determined on the accrual basis. Such financial obligation shall not be reduced by contributions of real or personal property. The guarantor shall fund the total common expenses incurred during the guarantee period including the full funding of reserves as included on the adopted budget, less the following items:

(a) Depreciation expense on real property;

(b) Depreciation expense on personal property contributed by the guarantor;

(c) For guarantee agreements established on or subsequent to June 14, 1995, and for guarantee agreements established prior to June 14, 1995 in which no method for calculating the guarantee was specified, the total revenues of the timeshare plan regardless of whether the actual level of assessments was less than the maximum guaranteed amount. For guarantee agreements established prior to June 14, 1995, in which a method for calculating the guarantee was specified, the maintenance assessment revenues of the timeshare plan regardless of whether the actual level of assessments was less than the maximum guaranteed amount; and

(d) If a guarantee pursuant to Section 721.15(2), Florida Statutes, existed within a multicondominium association created prior to July 1, 2000, the guarantor’s financial obligation to the association shall be calculated as provided in subsections (a) through (c) for each condominium in which the guarantee existed. If a guarantee pursuant to Section 721.15(2), Florida Statutes, existed within a multicondominium association created after June 30, 2000, or a multicondominium association that created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, the guarantor’s financial obligation to the association shall include the amount calculated pursuant to Section 718.116(9)(c), Florida Statutes, except that the calculation shall include total revenues as provided in Section 721.15(2), rather than the maintenance fee revenues as provided in Section 718.116(9)(c)..

## 61B-40.006 Reserves.

(1) Reserves required by statute. The proposed annual budget shall include the reserves required by section 721.07(5)(t)3., Florida Statutes, for capital expenditures and deferred maintenance, including roofing, painting, paving, unit furnishings, and any other building components having a useful life that is less than that of the overall structure.

(2) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by section 721.07(5)(t)3., Florida Statutes, shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset, over the remaining useful life of the asset. The amount of the current year funding for each reserve category shall be the sum of the following two calculations:

(a) If the fund balance of the reserve category is less than zero, the total estimated amount necessary to bring such negative reserve category balance to zero; and

(b) The total estimated deferred maintenance expense or total estimated replacement cost of the asset less the estimated balance of the reserve category as of the beginning of the period for which the budget will be in effect, the remainder of which shall be divided by the estimated remaining useful life of the asset.

The formula may consider factors such as inflation and earnings on invested funds and may be adjusted each year for changes in estimates and deferred maintenance performed during the year.

(3) Estimating reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves for condominium timeshare plans, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established a converter reserve, pursuant to section 721.03(3)(e), Florida Statutes, shall be the sum of:

(a) The developer's total funding obligation for the converter reserve account, calculated as if all timeshare periods are sold; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter reserve obligation, as of the beginning of the period for which the budget will be in effect.

## 61B-40.0061 Funding Requirements and Restrictions on Use.

(1) Timely funding. Reserves included in the adopted budget shall be considered common expenses and must be fully funded. Reserves shall be funded in the amounts stated in the adopted budget within 30 calendar days from the date the assessments are collected and not later than 180 days from the date such assessments are due. This rule shall not preclude the managing entity from fully funding the reserves prior to receiving all of the assessments due from purchasers.

(2) Reserve restrictions for timeshare plans. Neither reserve funds nor any interest earned on reserve funds shall be used for the payment of operating expenses unless approved in advance by a majority of the purchasers. Interest earned on reserve funds shall be allocated to the individual reserve category balances by the managing entity. Reserve funds and interest earned on reserve funds may be reallocated between the reserve categories by the board of administration at a duly called meeting of the board, by amending the current budget or through the next annual budgeting process.

## 61B-40.0062 Waiver of Reserves.

For condominium timeshare plans any vote to waive or reduce the funding of reserves required by Section 718.112(2)(f)2. or 721.07(5)(t), F.S., shall be effective for only one annual budget. In a multi-condominium association no waiver or reduction of the funding of reserves shall be effective as to a particular condominium unless:

(1) Conducted at a duly called meeting of the association;

(2) The same percentage of voting interests of the condominium as is otherwise required for a quorum of the association is present, or represented by proxy; and

(3) A majority of those voting interests in that condominium that are present, or represented by proxy, vote to waive or reduce the funding of reserves.

## 61B-40.007 Financial Reporting Requirements.

(1) Financial statements. The financial statements required by sections 718.301(4)(c) and 721.13(3)(e), Florida Statutes, shall at a minimum include the following:

(a) Auditor's Report;

(b) Balance Sheet;

(c) Statement of Revenues and Expenses;

(d) Statement of Changes in Fund Balances;

(e) Statement of Cash Flows; and

(f) Notes to Financial Statements.

Items (a) through (f) shall be referred to within this rule as financial statement components.

(2) Disclosure requirements. The financial statements required by sections 718.301(4)(c) and 721.13(3)(e), Florida Statutes, shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) Reserve disclosures as follows:

1. The beginning balance in each reserve account as of the beginning of the fiscal period audited;

2. The amount of assessments and other additions to each reserve account, including authorized transfers;

3. The amount expended or removed from each reserve account, including authorized transfers;

4. The ending balance in each reserve account as of the end of the fiscal period audited; and

5. The manner by which reserve items were estimated, the date the estimates were last made, and the policies for allocating reserve fund interest income.

(b) The method by which assessments and expenses were allocated to the purchasers;

(c) If a guarantee pursuant to section 718.116(9), Florida Statutes, or section 721.15(2), Florida Statutes, existed at any time during the fiscal year, the following shall be disclosed:

1. The period of time guaranteed;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of the developer's payments; and

5. Any financial obligation due to or from the developer resulting from the guarantee;

(d) Assessment revenues attributable to the developer disclosed separately from those attributable to the purchasers; and

(e) A detailed schedule of actual and budgeted revenues and expenses of the operating fund.

(3) Multicondominium associations. For Multicondominium associations, the audited financial statements required by sections 718.301(4)(c) and 721.13(3)(e), Florida Statutes, may present the financial statement components 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. Additionally, the financial statements, notes, or supplementary information shall disclose the following:

(a) The revenues and expenses of the association not directly related to any specific condominium and the method used to allocate such expenses to the purchasers, or such condominiums, as applicable; and

(b) The reserve disclosures required by paragraph (3)(a) of this rule, presented separately for each condominium and for any association reserves not directly related to any specific condominium.

(c) The provisions of this rule shall apply to multicondominium financial reporting for fiscal periods ending on or after December 31, 2002. Earlier application of the provisions of this rule is permitted.

(4) Timeshare license plans. The financial statements of a timeshare license plan shall include all of the activities of the timeshare plan. The financial statements need not include the activities of the developer or any other entity except to the extent required by generally accepted accounting principles or generally accepted auditing standards including items such as disclosure of related party transactions. However, if the financial statements of the timeshare plan include the activities of the developer or any other entity, the financial statements shall use a separate fund reporting format for the activities of the timeshare plan.

(5) Condominium associations operating both timeshare condominium units and non-timeshare condominium units. The financial statements of a timeshare plan operated by a condominium association that also operates non-timeshared units shall include only the activities of the timeshare plan. Alternatively, the association may prepare audited financial statements including all of the activities of the association as long as the financial statements use a separate fund reporting format for the activities of the timeshare plan.

(6) Effective date for financial reporting requirements. Subject to the scope provisions of rule 61B-40.002, F.A.C., the provisions of rule 61B-40.007, F.A.C., shall apply to the financial statements required by sections 718.301(4) and 721.13(3), F.S., for fiscal periods ending on or after December 31, 1995. For fiscal periods ending before December 31, 1995, a managing entity may elect to apply the provisions of rule 61B-40.007, F.A.C., in lieu of applying rule 61B-22.006, F.A.C., but the division shall not enforce the provisions of rule 61B-40.007, F.A.C., as to the financial statements for such fiscal periods.

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# Mandatory Non-Binding Arbitration Rules of Procedure

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## 61B-45.001 Scope, Organization, Forms, Purpose, and Title.

(1) This chapter shall be entitled “The Mandatory Non-Binding Arbitration Rules of Procedure” and shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings for mandatory non-binding arbitration held pursuant to Sections 718.1255, 719.1255, and 718.117, F.S. This chapter does not apply to recall arbitrations commenced pursuant to Section 718.112(2)(j) or 719.106(1)(f), F.S.; recall arbitrations shall be governed by Chapter 61B-50, F.A.C.

(2) All petitions and other papers filed with the division shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030. Arbitration orders may be obtained by accessing our online database at http://www.myfloridalicense.com/dbpr/lsc/ARB/LSCMHArbitrationResearch.html.

(3) In order to file a petition for arbitration of a dispute involving a plan of termination pursuant to Section 718.117, F.S., a petitioner must use DBPR Form ARB 6000-013, MANDATORY NONBINDING PETITION FORM FOR A TERMINATION DISPUTE, incorporated herein by reference at http://www.flrules.org/Gateway/reference.asp?No=Ref-06657 and effective 5-16.

(4) In order to file a petition for arbitration involving any dispute governed by this chapter, other than a dispute involving a plan of termination pursuant to Section 718.117, F.S., a petitioner must use DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated herein by reference at http://www.flrules.org/Gateway/reference.asp?No=Ref-06660 and effective 7-4-04.

(5) In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR Form ARB 6000-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference at http://www.flrules.org/Gateway/reference.asp?No=Ref-06661 and effective 7-4-04.

(6) An answer to a petition for arbitration must be filed using DBPR Form ARB 6000-003, ANSWER TO PETITION, incorporated herein by reference at http://www.flrules.org/Gateway/reference.asp?No=Ref-06662 and effective 4-30-98.

(7) A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed using DBPR Form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference at http://www.flrules.org/Gateway/reference.asp?No=Ref-07170 and effective 7-4-04.

(8) Copies of the forms referenced in these rules may be obtained online at http://www.myfloridalicense.com/dbpr/lsc/ARB/LSCMHArbitrationEducation.html or by writing to: Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Section, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

## 61B-45.004 Who May Appear; Criteria for Other Qualified Representatives; Standards of Conduct.

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who does not need to be an attorney, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, Florida Statutes, and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, he or she shall file with the arbitrator a completed DBPR form [ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-003Answereff70304.pdf), incorporated in subsection 61B-45.001(3), Florida Administrative Code. Based on the information provided on the completed form, and based on the responses to any inquiries made by the arbitrator concerning the applicant's familiarity and understanding of the statute and rules applicable to the proceeding, the arbitrator shall determine whether the prospective representative is authorized and qualified to appear in the arbitration proceedings and capable of representing the rights and interests of the person.

(3) Members of The Florida Bar and certified law students are bound by a broad code of ethics. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives appearing in any arbitration proceeding, except counsel subject to the disciplinary procedures of The Florida Bar.

(4) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading to ensure that the motion or pleading is filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good grounds and that it has not been presented solely for delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or suppress any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secrete himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

## 61B-45.007 Communication with Arbitrator.

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

## 61B-45.009 Computation of Time; Service by Mail.

(1) In computing any period of time prescribed or allowed for the filing or service (i.e., mailing) of any document, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day. When the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a document and that document is served by regular U.S. mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. No additional time is added for filing a motion for rehearing that must be filed (e.g., received by the agency) within 15 days of entry of a final order, or a motion for costs and attorney fees that must be filed within 45 days of entry of the final order as required by Rule 61B-45.048, F.A.C., unless an appeal for trial de novo has been timely filed in the courts. Also, no additional time is added by operation of this rule for the filing of a complaint for trial de novo which must be filed in the courts within 30 days of the date of rendition of a final arbitration order as required by Section 718.1255(4)(k), F.S.

## 61B-45.010 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, except the initial petition, shall also be served on each party. A pleading or other paper is considered "filed" when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature"

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the original petition for arbitration shall be accompanied by one (1) copy for each named respondent.

(4) "Filing" shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved;

(b) The docket number, if any;

(c) The name of the party on whose behalf the pleading is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

## 61B-45.011 Motions; Temporary or Interim Injunctive or Emergency Relief.

(1) An application to the arbitrator for an order shall be made by motion which shall be made in writing, unless made during a hearing, shall state in detail the grounds for the relief requested, and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 days of service of a written motion, file a written response in opposition to the motion.

(2) A party may, either with the original petition for arbitration or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

## 61B-45.013 Matters Eligible or Ineligible for Arbitration.

(1) A "dispute" under Section 718.1255, Florida Statutes, includes a disagreement that involves use of a unit or the appurtenances thereto, including use of the common elements.

(2) Except for disputes involving the termination of a condominium, no controversy shall be accepted for arbitration under these rules where the controversy is between or among unit owners, or between or among a unit owner or unit owners and tenants, except where the association is a party and the dispute is otherwise eligible for arbitration. Except for disputes involving the termination of a condominium, the only disputes eligible for arbitration are those existing between a unit owner or owners and the association or its board of administration; however, pursuant to Rule 61B-45.015, F.A.C., a tenant shall be named as a party respondent where the subject matter of the dispute concerns a tenant. In addition, other unit owners having a particular interest in the proceeding shall be named as parties.

(3) Except as otherwise provided by Rule 61B-45.035, Florida Administrative Code, any party who has participated as a party in a prior arbitration, administrative or court hearing shall not be allowed, consistent with the principles of res judicata and collateral estoppel, to raise identical issues in a subsequent arbitration hearing.

(4) Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated.

(5) No petition shall be accepted for arbitration under these rules which involves issues which are moot, abstract, hypothetical, or otherwise lacking the requirements of a case or controversy; no dispute which is not a bona fide, actual and present dispute shall be accepted for arbitration.

(6) No petition shall be accepted for arbitration under these rules which alleges the failure by the association to enforce, or properly enforce, the condominium documents, unless the controversy otherwise constitutes a dispute as defined by Section 718.1255, Florida Statutes, and these rules.

(7) No petition shall be accepted for arbitration under these rules which alleges the failure of the association to properly repair, replace, or maintain the common elements, common areas, association property, or cooperative property unless the petition also alleges how the petitioner's use of the common elements, common areas, association property, or cooperative property has been directly affected as a result of the alleged failure.

(8) No petition shall be accepted for arbitration under these rules unless it arises in a residential cooperative or condominium, and involves a residential unit or units; however, a petition will be accepted which arises in a nonresidential condominium, if the declaration provides for arbitration pursuant to Section 718.1255, F.S.

(1) Parties in proceedings before the arbitrator are unit owners, associations, and tenants to the extent provided in subsection 61B-45.013(5). If the dispute involves a tenant, the tenant and the unit owner shall be named as party respondents. If the petition may directly affect the particular interests of a non-party unit owner, the unit owner shall be made a party to the proceeding. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding. The party who files a petition shall be designated as the petitioner. The party who files an answer shall be designated as the respondent.

(2) Withdrawal of Counsel or Representative. An attorney or qualified representative who has filed a petition or has otherwise become an attorney or representative of record for any party to a proceeding under these rules shall remain attorney or representative of record in said cause and shall be permitted to withdraw from the cause only upon filing a notice with the arbitrator, which notice shall provide a correct mailing address for the client.

## 61B-45.016 Expedited Procedure for Determination of Jurisdiction.

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a completed DBPR Form [ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000004Expediteddeterminationeff70304.pdf), incorporated in subsection 61B-45.001(7), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by either a completed DBPR Form [ARB 6000-001, MANDATORY NON-BINDING PETITION FORM](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-001PetitionforArbitrationeff70304.pdf) or [DBPR Form ARB 6000-013, MANDATORY NONBINDING PETITION FORM FOR A TERMINATION DISPUTE](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-013PetitionforArbitrationeff70304.pdf), incorporated in subsections 61B-45.001(3) and (4), F.A.C., which shall include the $50 filing fee provided by Section 718.1255, F.S.

(2) If the determination of jurisdiction is subject to reasonable dispute, within 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by U.S. mail to all other persons involved with the dispute, a copy of the request for relief, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

(3) The arbitrator, within 20 days of receipt of the responses permitted by subsection (2) above, shall make a determination of whether the controversy falls within the jurisdiction of the division, and shall enter an appropriate order.

## 61B-45.017 Initiation of Arbitration Proceedings; Content of Petition.

(1) Initiation of arbitration proceedings shall be made by a unit owner or association filing the original petition for arbitration and one copy for each named respondent with the Division of Florida Condominiums, Timeshares, and Mobile Homes. All petitions shall be submitted on either a completed [DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-001PetitionforArbitrationeff70304.pdf) or [DBPR Form ARB 6000-013, MANDATORY NONBINDING PETITION FORM FOR A TERMINATION DISPUTE](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-013PetitionforArbitrationeff70304.pdf), as applicable and incorporated in subsections 61B-45.001(3) and (4), F.A.C. A fee of $50.00 shall be included with each petition for arbitration. A petition which is not accompanied by this fee shall not be processed. Once a petition and the filing fee is received by the division for filing, the fee cannot be refunded.

(2) If a person other than an attorney files a petition or other pleading as a representative of a party, that person shall simultaneously file a completed [DBPR Form ARB 6000-002, QUALIFIED REPRESENTATIVE APPLICATION](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000002QualifiedRepAppeff70304.pdf), incorporated in subsection 61B-45.001(5), F.A.C.

## 61B-45.018 Processing of Arbitration Petitions; Notification to Parties.

(1) If, upon receipt of a petition for arbitration, the filing fee required by Section 718.1255, Florida Statutes, is not included, the division shall return the petition to the sender with an explanation for its return.

(2) After assignment of a petition for arbitration, the arbitrator shall make a preliminary determination on whether the controversy described in the petition falls within the jurisdiction of the division and whether the petition complies with Rule 61B-45.017, Florida Administrative Code.

(3) If the controversy falls within the jurisdiction of the division and the petition complies with Rule 61B-45.017, F.A.C., the arbitrator shall so notify the petitioner and shall proceed as set forth in subsection (5) below. The arbitrator shall reject a petition if it is determined to be outside the jurisdiction of the division.

(4) If the petition fails to comply with rule 61B-45.017, Florida Administrative Code, the arbitrator shall enter an order requiring petitioner to amend the petition to comply with Rule 61B-45.017, Florida Administrative Code. The arbitrator shall reject a petition for noncompliance with Rule 61B-45.017, Florida Administrative Code.

(5) If the arbitrator preliminarily determines the dispute to fall within the jurisdiction of the division and determines that the petition complies with Rule 61B-45.017, F.A.C., the arbitrator shall by United States certified mail or personal service provide the respondent with a copy of the petition and an order requiring respondent to file an answer.

(6) For petitions involving a plan of termination pursuant to Section 718.117, F.S., after 90 days from the date the petition states that the challenged termination plan was recorded in the public records of the county in which the condominium is located, the arbitrator shall serve the respondent(s) with a copy of the petition and an order requiring respondent to file an answer.

## 61B-45.019 Answer and Defenses.

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a respondent shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. The answer shall include all defenses and objections, and shall be filed on DBPR form [ARB96-003, ANSWER TO PETITION](http://www.myfloridalicense.com/dbpr/lsc/documents/ARB6000-003Answereff70304.pdf), incorporated in subsection 61B-45.001(3), F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in Rule 61B-45.017.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition postpones the time for filing of the answer until 20 days after the arbitrator's ruling on the motion. The following defenses shall be made by motion in opposition to the petition:

(a) Lack of jurisdiction over the subject matter,

(b) Lack of jurisdiction over the person,

(c) Insufficiency of process,

(d) Insufficiency of service of process,

(e) Failure to state a cause of action, and

(f) Failure to join indispensable parties.

A motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based. The defense of selective enforcement shall contain all examples of selective enforcement upon which the respondent depends, shall indicate the unit(s) to which each example pertains, shall identify the unit owner(s), how long the violation has existed, and shall indicate whether the board knew of the existence of the violation(s). The defense that the petitioner has failed to provide the pre-arbitration notice required by Section 718.1255, Florida Statutes, is deemed waived if not asserted by motion to dismiss set forth in subsection (2) above or in the answer.

(4) An answer shall separately identify all facts contained in the petition which the respondent disputes, or shall in the alternative state that no disputed facts exist. All facts not specifically denied shall be deemed admitted. A general denial does not satisfy the requirements of this paragraph. Any answer which fails to comply with this requirement shall be stricken.

## 61B-45.020 Defaults and Final Orders on Default.

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) Final Order. Final orders after default may be entered by the arbitrator at any time. The arbitrator shall receive affidavits as necessary to determine damages.

(3) Setting Aside Default. If a final order after default has been entered, the arbitrator may set it aside for reasons of excusable neglect, mistake, surprise, or inadvertence. A motion setting aside the final order after default must be made within a reasonable time not to exceed 1 year after the final order was entered.

## 61B-45.024 Discovery.

(1) It is intended that the discovery process shall be used sparingly and only for the discovery of those things which are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as may be modified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner’s right of access to the official records as provided by Section 718.111(12), Florida Statutes, in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

## 61B-45.025 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure (1996), or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, Florida Statutes (1996), or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

## 61B-45.030 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute which does not involve a disputed issue of material fact as shown by the answer, prehearing stipulation, or otherwise, shall be arbitrated as provided in this rule.

(2) At any time after the filing of the petition and answer, if any, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief pursuant to the petition if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds that no meritorious defense exists, and that the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-45.039, Florida Administrative Code, shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute solely upon the pleadings and evidence filed by the parties.

## 61B-45.033 Notice of Final Hearing; Scheduling; Venue; Continuances.

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) Whenever possible, hearings shall be held by telephone conference call or at the place most convenient to all parties and witnesses as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing may be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

## 61B-45.035 Withdrawal or Voluntary Dismissal of Petition; Settlement.

(1) A petitioner may withdraw or voluntarily dismiss the petition for arbitration at any time. Such withdrawal or dismissal shall be in writing directed to the arbitrator and shall be without prejudice to refiling. No withdrawal or voluntary dismissal of a petition shall operate as an automatic withdrawal or dismissal of any other claim or petition pending in that case.

(2) Withdrawal or voluntary dismissal of the petition for arbitration shall not constitute exhaustion of administrative remedies or otherwise relieve the petitioner of the requirement of arbitration prior to resort to the courts as provided by Section 718.1255(4)(a), Florida Statutes, or Section 719.1255, Florida Statutes.

(3) The petitioner may request that the arbitration be dismissed based on a settlement of the dispute. Except as otherwise provided by subsection 61B-45.048(8), Florida Administrative Code, or by the terms of a settlement agreement, the settlement of a dispute shall not preclude the filing of a petition for costs and attorney fees pursuant to Rule 61B-45.048, Florida Administrative Code.

(4) Where a party undertakes corrective action in the case which ends the dispute between the parties, such as removing an unapproved pet or tenant, that party shall immediately notify the arbitrator of the action taken.

## 61B-45.036 Conduct of Proceedings by Arbitrator.

(1) The failure or refusal of a petitioner to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition or individual claims or imposition of costs and attorney fees, or both, as appropriate, where such failure is deemed willful, intentional, or a result of neglect. The dismissal of any petition pursuant to this rule shall not be considered a decision on the merits of the petition.

(2) The failure or refusal of a respondent to comply with any lawful order of the arbitrator or with a provision of these rules shall result in the striking of the answer or individual defenses or imposition of costs and attorney fees, or both, as appropriate.

(3) The arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing, by telephone conference.

(4) At any time after a petition has been filed with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

## 61B-45.0365 Non-Final Orders.

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is placed in abeyance or abated by a non-final order, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

## 61B-45.037 Stenographic Record and Transcript.

(1) Any party wishing a stenographic record shall make such arrangements directly with the court reporter and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party's own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

## 61B-45.039 Conduct of Formal Hearing; Evidence.

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross-examine the other party's witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses, then the respondent shall present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding, and the formal rules of evidence applicable to court proceedings do not generally apply. Any relevant evidence shall be admitted if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proved through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath) may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding, unless the hearsay evidence would be admissible over objection in a civil action. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits and shall be so marked in the order received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

## 61B-45.043 Final Orders; Appeals; Stays.

(1) Unless waived, a final order shall be entered within 45 days after the hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of any award or remedy. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show the date of mailing of the final order to the parties. The date of mailing of the final order shall be the date used to calculate the deadline for appeal by trial de novo.

(3) The final order shall include notice of the right to initiate judicial proceedings under Section 718.1255, Florida Statutes, or Section 719.1255, Florida Statutes.

(4) The decision shall be final and binding upon the parties, unless judicial proceedings are initiated pursuant to Section 718.1255 or 719.1255, Florida Statutes.

(5) The arbitrator in the final order may grant mandatory or prohibitory relief, monetary damages, declaratory relief, or any other remedy or relief which is deemed just and equitable. However, no final order may include the imposition of a civil penalty pursuant to Section 718.501 or 719.501, Florida Statutes.

(6) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(7) A final order of the arbitrator does not constitute final agency action and therefore is not appealable to the district courts of appeal as otherwise provided by Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Appeals, if taken, shall be by trial de novo as described in subsection (4) above.

(8) The arbitrator, the division, and the Department of Business and Professional Regulation are not necessary parties in judicial proceedings relating to the arbitration, including appeals by trial de novo and actions seeking enforcement of final orders.

(9) A final or nonfinal order is effective upon its issuance unless a stay has been issued. A party who appeals from an order seeking to stay a final or nonfinal order may, within 30 days of issuance of a final or nonfinal order form which an appeal is sought, file a motion to stay with the arbitrator who shall have continuing jurisdiction to grant, modify, or deny such request for relief.

## 61B-45.044 Motions for Rehearing.

(1) A motion for rehearing may be filed within 15 days after the date of entry of the final order. The motion shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended and shall not reargue the merits of the final order. Any response to the motion must be filed within 10 days of service of the motion.

(2) The arbitrator shall not modify the substance of the final order except upon a showing that the decision is based on a clear error of law or fact. A motion that is timely filed pursuant to this rule shall suspend the operation of the final order, and the time for filing a complaint for trial de novo, a motion seeking to recover prevailing party costs and attorney fees, or a petition for enforcement under Sections 718.1255 and 719.1255, Florida Statutes, shall not commence until the arbitrator either denies the motion or enters an amended final order. An untimely filed motion for rehearing does not toll or otherwise stop the time provided for the filing of a motion for prevailing party costs and attorney fees or the time provided for the filing of a petition for trial de novo in the courts.

## 61B-45.048 Claim for Costs and Attorney fees.

(1) Any party seeking an award of costs and attorney fees must request the award in writing prior to the rendition of the final order.

(2) A prevailing party seeking an award of costs and attorney fees shall file a motion seeking the award not later than 45 days after rendition of the final order, except that if an appeal by trial de noveo has been timely filed in the courts, a motion seeking prevailing party costs and attorney fees must be filed within 45 days following the conclusion of that appeal and any subsequent appeal. The motion is considered "filed" when it is received by the division. The motion shall:

(a) State the basis for the petition and the total attorney fees and costs that are claimed;

(b) Specify the hourly rate claimed;

(c) Include an affidavit by the attorney who performed the work that:

1. States the number of years in which the attorney has been practicing law,

2. Indicates each activity for which compensation is sought, and

3. States the time spent on each activity. In a case involving multiple issues which are separate and distinct from each other, the affidavit shall identify the specific issue for which each activity was performed.

(d) If an award of costs is sought, attach receipts or other documents that provide evidence of the costs claimed. The arbitrators shall follow Florida case law and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in awarding costs. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript, or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

(3) The failure of a party to timely file a motion complying with this rule or to timely plead for or request attorney fees shall preclude the party from recovering its costs and attorney fees incurred in the arbitration.

(4) The parties on whom a motion for costs and attorney fees is served shall have 20 days from receipt of the motion in which to file a response to the motion with the arbitrator.

(5) A final order on the motion for attorney fees or costs shall be entered in the manner and within the time prescribed by rule 61B-45.043, Florida Administrative Code. In determining a reasonable hourly fee and a reasonable total award of costs and attorney fees, the arbitrator is not required to conduct any hearing or proceedings or to seek or consider expert advice or testimony.

(6) Any proceeding seeking costs and attorney fees shall be stayed if a party to that proceeding has timely filed a complaint for trial de novo. The party filing the complaint for trial de novo shall notify the arbitrator that such complaint has been filed. The stay shall be in force and effect until the conclusion of that litigation and any subsequent appeal.

(7) The prevailing party in a proceeding brought pursuant to Section 718.1255, Florida Statutes, is entitled to an award of reasonable costs and attorney fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition. Where a respondent has provided the relief sought by the petitioner prior to the filing of the petition and service on the respondent of the order requiring answer and copy of the petition, the petitioner under these circumstances is not deemed to be a prevailing party and is not entitled to an award of reasonable costs and attorney fees. The factors to be considered by the arbitrator in determining a reasonable attorney fees include the following:

(a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;

(b) The likelihood that the acceptance of the particular employment will preclude other employment by the attorney;

(c) The fee customarily charged in the locality for similar legal services;

(d) The amount involved and the results obtained;

(e) The time limitations imposed by the client or by the circumstances;

(f) The nature and length of the professional relationship with the client; and

(g) The experience, reputation, and ability of the attorney or attorneys performing the services.

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# The Rules of Procedure Governing Recall Arbitration

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## 61B-50.101 Scope, Organization, Procedure, and Title.

(1) This chapter shall be entitled “The Rules of Procedure Governing Recall Arbitration” and shall govern the arbitration of a recall of one or more members of a board of administration of a condominium, cooperative, or mobile home homeowners’ association. These rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings held pursuant to Section 718.112(2)(j), 719.106(1)(f) or 723.078(2)(i), F.S. The provisions of Chapter 682, F.S., and Chapter 61B-45, F.A.C., do not apply.

(2) All petitions and other papers filed with the division for recall arbitration pursuant to Sections 718.112(2)(j), 719.106(1)(f) and 723.078(2)(i), F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Division, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.

## 61B-50.105 Initiation of Recall Arbitration.

(1) When one or more members of a board of administration of a condominium, cooperative, or mobile homeowners’ association have been recalled, the board of administration may initiate a recall arbitration by filing a petition for recall arbitration with the division, as follows:

(a) Recall at a Unit Owner or Member Meeting. Where the unit owners or members attempt to recall one or more members of a board at a unit owner or member meeting, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall.

(b) Recall by Written Agreement. Where the unit owners or members attempt to recall one or more members of a board by written agreement of a majority of the voting interests, and the board does not certify the written agreement to recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

(2) The time periods contained in Section 718.112(2)(j), 719.106(1)(f) and 723.078(2)(i), F.S., operate, for purposes of these arbitration rules and not for enforcement purposes under Sections 718.501, 719.501 or 723.005, F.S., in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board’s claims of excusable neglect or the inability to identify defects in the recall effort within the time provided, or other unremarkable excuses will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718, 719 and 723, F.S., will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rules 61B-23.0028, 61B-75.008 or 61B-33.003, F.A.C.

(3) Only the board of an association may file a petition for recall arbitration. Where the board fails to file a petition for recall arbitration as required by these rules and Chapters 718, 719 and 723, F.S., the unit owners or members seeking to challenge the board’s decision not to file for recall arbitration may file a petition for arbitration pursuant to Section 718.1255(1)(b), 719.1255 or 723.1255, F.S.

(4) Form of Petition. The term "petition" as used in this rule includes any application or other document that expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

(5) All petitions for arbitration of a recall shall be signed by either a duly authorized board member, a member of the Florida Bar, or a qualified representative who has been retained by the board. Each petition shall contain:

(a) The name and address of the association and the number of voting interests;

(b) The name or names of the board member or members who were recalled;

(c) The name and address of the unit owner or member representative selected, pursuant to subparagraph 61B-23.0027(3)(b)2., paragraph 61B-23.0028(1)(f), subparagraph 61B-75.007(3)(b)2., paragraph 61B-75.008(1)(f), subparagraph 61B-33.002(3)(b)1. or paragraph 61B-33.003(1)(f), F.A.C., to receive pleadings, notices, or other papers on behalf of the recalling unit owners or members;

(d) A statement of whether the recall was by vote at a meeting of the membership or by written agreement;

(e) If the recall was by vote at a meeting, the petition shall state the date of the meeting of the membership and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

(f) The date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order and adjourned;

(g) A copy of the minutes of the board meeting at which the board determined not to certify the recall;

(h) Each specific basis upon which the board based its determination not to certify the recall, including the unit or mobile home lot number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner or member may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

(i) Any relevant sections of the bylaws, articles of incorporation, the declaration of condominium, cooperative documents, and rules, including all amendments thereto, as well as any or other documents which are pertinent to the petition; and

(j) Any other information which the petitioner contends is material.

(6) If, during the pendency of a recall arbitration, the unit owners in the condominium, cooperative, or members in the mobile home homeowners’ association attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

(7) Upon receipt and review of a petition for arbitration of a recall of one or more board members, the division shall either accept or deny the petition. If the petition is accepted, within 10 days the arbitrator shall serve the respondent unit owners or members by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling unit owners or members identified in the petition.

## 61B-50.106 Computation of Time.

(1) In computing the five full business days prescribed by Sections 718.112(2)(j), 719.106(1)(f) and 723.078(2)(i), F.S., and these rules, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day.

(2) Additional Time after Service by Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a paper upon that party and the paper is served by regular United States mail, five days shall be added to the prescribed period. This provision does not apply to the filing of the petition for recall arbitration. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission.

## 61B-50.107 Parties.

(1) Parties in any proceeding conducted in accordance with Section 718.112(2)(j), 719.106(1)(f) or 723.078(2)(i), F.S., are petitioners or respondents.

(2) The petitioner shall be the board of administration of an association that files a petition for binding arbitration of a recall of one or more members of the board.

(3) The respondent shall be the group of members of an association who voted at a meeting, or who executed a written agreement, to recall one or more members of the board.

(4) All parties shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-50.115, F.A.C.

## 61B-50.108 Who May Appear; Criteria for Other Qualified Representatives.

(1) Any person who appears before an arbitrator has the right, at that person’s own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718, 719 or 723, F.S., and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative’s sworn affidavit setting forth the representative’s qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the unit owner’s or member’s interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration.

(4) The arbitrator shall make a determination of the qualifications of the prospective non-attorney representative in light of the nature, scope and extent of the proceedings, the proposed representation, the applicable federal and state laws, rules and regulations, and the factual and legal issues to be presented during the arbitration proceeding. (The prospective non-attorney representative shall not, however, be required to disclose facts and legal theories to the prejudice of his client.) In determining the qualifications of a prospective non-attorney representative, the arbitrator shall consider the following criteria to the extent they are relevant, material, and applicable to the proceeding:

(a) The prospective representative's knowledge of jurisdiction and supportive legal authority to file the initial petition;

(b) The knowledge or experience of the prospective representative regarding Chapter 61B-50, F.A.C., The Rules of Procedure Governing Recall Arbitration, Section 718.112(2)(j), 719.106(1)(f) or 723.078(2)(i), F.S., and the scope and remedies of the arbitration process;

(c) The knowledge or experience of the prospective representative regarding the application and interpretation of the Florida Rules of Civil Procedure as they relate to discovery in an arbitration proceeding;

(d) The knowledge or experience of the prospective representative regarding the rules of evidence, including the concept of hearsay and its use in an arbitration proceeding;

(e) The knowledge or experience of the prospective representative regarding the statutes of rules which may be at issue;

(f) The educational background, training or work experience of the prospective representative relevant to the subject matter involved in the proceeding;

(g) The relationship of the prospective representative to the person, and the need of the person to have a representative speak on the person's behalf; and

(h) Any other matters which are deemed relevant and material by the arbitrator.

(5) A representative named in the initial petition or who has filed a notice of appearance shall remain the representative of record and shall receive pleadings and continue in a representative capacity until the representative's withdrawal has been approved in writing by the arbitrator.

(6) Any successor or associated attorney or other non-attorney representative shall file a notice of appearance prior to, or at the time of, the filing of any pleading with, or appearance before, the arbitrator.

(7) Members of the Florida Bar and certified law students are bound by the Rules of Professional Conduct of the Rules Regulating the Florida Bar. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives, including unit owner and member representatives chosen pursuant to subparagraph 61B-23.0027(3)(b)2., paragraph 61B-23.0028(1)(f), subparagraph 61B-75.007(3)(b)2., paragraph 61B-75.008(1)(f), subparagraph 61B-33.002(3)(b)1. or paragraph 61B-33.003(1)(f), F.A.C., appearing in any arbitration proceeding, except counsel subject to disciplinary procedures of the Florida Bar.

(8) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading. All motions or pleadings shall be filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative’s knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secret himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’s testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

## 61B-50.110 Communication with an Arbitrator.

(1) While a case is pending, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation concerning the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

## 61B-50.112 Withdrawal of Petition.

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

## 61B-50.115 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, including the initial petition, shall also be served on each party. A pleading or other paper is considered “filed” when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) When the unit owners or members have not designated a unit owner or member representative to represent their interest in a recall proceeding or when the unit owner or member representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration and the order allowing answer on the condominium, cooperative, or mobile home park property in a conspicuous location as a means of notifying the unit owners or members of the recall arbitration.

(c) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall arbitration shall be accompanied by one (1) copy for the respondents.

(4) "Filing” shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. Except for the initial petition for recall arbitration, a facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved;

(b) The case number, if any;

(c) The name of the party on whose behalf the pleading or motion is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

## 61B-50.117 Motions.

An application to the arbitrator for an order shall be made by written motion, unless made during a hearing, The motion shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 business days of service of a written motion, file a written response in opposition to the motion.

## 61B-50.119 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute which does not involve a disputed issue of material fact shall be arbitrated as hereinafter provided.

(2) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-50.131, Florida Administrative Code, shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(5) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

## 61B-50.124 Discovery.

(1) The discovery process shall be used sparingly and only for the discovery of those things that are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as otherwise specified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner or member desiring to obtain copies of official association records for use in the proceeding shall utilize the owner’s right of access to the official records as provided by Sections 718.111(12), 719.104(2) and 723.079(4), F.S., in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties to submit supplemental information, evidence or affidavits in support of or refuting the reason(s) listed in the petition as grounds for failing to certify the recall.

## 61B-50.126 Conduct of Proceeding by Arbitrator.

(1) The failure or refusal of a respondent to comply with a provision of these rules or any lawful order of the arbitrator shall result in the striking of the answer including any defenses or pending claims where such failure is deemed willful, intentional, or a result of neglect.

(2) The failure or refusal of an association to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect.

(3) In order to expedite the case, the arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing or final hearing, by telephone or video conference.

(4) At any time after a petition has been filed with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

## 61B-50.1265 Non-Final Orders.

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is placed in abeyance or abated by a non-final order, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

## 61B-50.127 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure, or as that rule may subsequently be renumbered.. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, Florida Statutes, or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

## 61B-50.130 Stenographic Record and Transcript.

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all the costs of obtaining such a record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party’s own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

## 61B-50.131 Conduct of Formal Hearing; Evidence.

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross examine the other party's witnesses, enter objections and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, the respondent may present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any relevant evidence if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but is not sufficient to support a finding, unless the hearsay evidence would be admissible in a court of law. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits. The exhibits shall be marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

## 61B-50.136 Notice of Final Hearing; Scheduling; Venue; Continuances

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator.

(3) In the arbitrator’s discretion, a continuance of a hearing shall be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

## 61B-50.139 Final Orders.

(1) Unless waived, a final order shall be entered within 30 days after any final hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post- hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show the date of mailing of the final order to the parties.

(3) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(4) A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

## 61B-50.140 Technical Corrections; Rehearing.

(1) Any party may file a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 10 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. The order may be corrected without affecting the merits of the decision upon the issues submitted. Such correction shall be achieved by the entry of a corrected order. The substance of the order itself may not be modified.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by subsection (1) above within 60 days of the entry of the final order.

(3) No motion for rehearing of a final order certifying the recall shall be filed.

## 61B-50.1405 Motions for Attorney fees and Costs.

No party shall be entitled to recover its costs and attorney fees in a recall proceeding initiated pursuant to Section 718.112(2)(j), 719.106(1)(f) or 723.078(2)(i), F.S.

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## 61B-75.002 Electronic Transmission of Notices.

(1) Definition. “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 a 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.

(2) 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.

(3)(a) 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 unit owner of record or by a person holding a power of attorney executed by the shareholder of record. Consent or revocation of consent may be delivered to the association by 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.

(b) 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.

(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.

(4) Attachments and Other Information. In order to be effective, 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 719.106(1)(d)1., Florida Statutes, 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.

(5) Effect of Sending Electronic Meeting Notice. Notice of a meeting shall be deemed 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 (3)(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.

(6) 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, unless removed in accordance with Section 719.104(2)(a)5., Florida Statutes. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.

## 61B-75.004 Audio or Video Recording of Meetings.

Any unit owner is entitled to tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(1) Rules: Associations may adopt rules, which are consistent with this rule, regarding the placement and use of audio and video equipment by unit owners who exercise their rights to tape association meetings. Association rules for this purpose must be adopted in accordance with the procedures for adopting association rules established by the cooperative documents.

(2) Placement: Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(3) Use: Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

## 61B-75.005 Regular Elections; Vacancies Caused By Expiration Of Term, Resignations, Death.

(1) (a) Unless otherwise provided herein, the provisions of this rule apply to all regular and runoff elections conducted by a cooperative association, regardless of any provision to the contrary contained in the corporate documents.

(b) Except as otherwise provided by rules 61B-75.007 and 61B-75.008, Florida Administrative Code, the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in rules 61B-75.006 through 61B-75.008, Florida Administrative Code.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 719.106(1)(d), F.S., an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association’s bylaws. Such vote must be taken on or after June 14, 1995. The phrase “different voting and election procedures” as used in this rule and as used in Section 719.106(1)(d)6., F.S., refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to Section 719.106(1)(d)6., F.S., to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances.

(2) A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the unit owners, regardless of whether a quorum is attained for the meeting.

(3) A board of administration shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the board. A board may create or appoint a search committee which shall not have the authority to nominate any candidate but may encourage qualified persons to become candidates for the board.

(4) The first notice of the date of the election, which is required to be mailed or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association. 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.

(5) A unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Written notice shall be effective when received by the association. Written notice shall be accomplished in accordance with one or more of the following methods:

(a) By certified mail, return receipt requested, directed to the association; or

(b) By personal delivery to the association; or

(c) By regular U. S. mail, facsimile, telegram, or other method of delivery to the association.

(6) Upon receipt by the association of any timely submitted written notice by personal delivery that a unit owner or other eligible person desires to be a candidate for the board of administration, the association shall issue a written receipt acknowledging delivery of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate’s background, education, and qualifications. The information contained therein shall not exceed one side of the sheet, which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the association.

(8) In accordance with the requirements of Section 719.106(1)(d), Florida Statutes, the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The second notice and accompanying documents shall not contain any communication by the board which endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

(9) The ballot shall indicate in alphabetical order by surname, each and every unit owner or other eligible person who desires to be a candidate for the board of administration and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has withdrawn his candidacy in writing prior to the mailing of the ballot. No ballot shall indicate which candidate or candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests in a cooperative are not entitled to one whole vote (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all ballot forms utilized by a cooperative association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b) below. The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked “Disregarded” or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. 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. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked “Disregarded,” or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;

2. Officers; and

3. Candidates for the board. At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the association shall, unless otherwise provided in the bylaws, conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a notice of a runoff election. The only candidates eligible for the runoff election are the runoff candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the runoff election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the association. 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 vote occurred.

(11) Electronic Voting. The requirements for providing an online voting system are contained in Rule 61B-75.0050, F.A.C.

(12) Any voter 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 to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter’s choice.

(13) At a minimum, all voting machines shall meet the following requirements:

(a) Shall secure to the voter secrecy in the act of voting;

(b) Shall permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for, but no more;

(c) Shall correctly register or record, and accurately count all votes cast for any and all persons;

(d) Shall be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read the ballots; and

(e) Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

**61B-75.0050 Electronic Voting.**

(1) “Election Officials,” as used in Section 719.129, F.S., includes the division.

(2) “Consent, in writing,” as used in Section 719.129, F.S., may be made via email. The email address of the unit owner consenting is not considered an official record, unless the unit owner has previously consented to receive notices via email.

(3) The board resolution required by Section 719.129(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.

(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 each 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 renotice the election following the procedures as set forth in subsection 61B-75.005(8), F.A.C

## 61B-75.0051 Provider Filing and Curriculum for Educational and Training Programs.

(1) Anyone seeking to be a division approved cooperative education provider shall file with the division the educational materials used in the cooperative education program. The following information shall be included regarding the education program:

(a) A price list for the program and a copy of all materials, including any information that will be provided to participants.

(b) The physical locations where programs will be available, if not web-based.

(c) Dates when programs will be offered.

(2) All materials must be submitted to the division via e-mail to [CTMH.BdMbrCertProviders@myfloridalicense.com](mailto:CTMH.BdMbrCertProviders@myfloridalicense.com), by providing access to web-based training programs, or in either printed form or CD ROM format to the following address: Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, FL 32399-1030.

(3) Programs shall cover at least four of the following topics in order to meet the requirements of an educational curriculum for a cooperative education program as provided in Section 719.106(1)(d)1.b., F.S.:

(a) Budgets and reserves.

(b) Elections.

(c) Financial reporting.

(d) Condominium operations.

(e) Records maintenance, including unit owner access to records.

(f) Dispute resolution.

(g) Bids and contracts.

(4) Programs and materials shall not contain editorial comments.

(5) Within 45 days from receipt of the materials, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 45 days from receipt of the materials, the materials are deemed approved.

(6) The provider shall have 45 days from the date of the division’s notification of deficiencies to correct such deficiencies. If the deficiencies are not corrected within the 45-day period, the division shall reject the filing.

(7) Within 20 days from receipt of the corrections to noted deficiencies, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 20 days from receipt of the corrections, the materials are deemed approved.

(8) Approved materials may be provided to participants via web-based training programs, seminars, or printed media.

(9) The division will maintain a list of approved programs and providers on the Department of Business and Professional Regulation’s website at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>.

(10) The division reserves the right to require changes to approved education and training programs.

(11) The provider will issue a certificate of completion to a board member who has successfully completed the approved educational curriculum.

## 61B-75.006 Right to Recall and Replace a board member; Developers; Other Unit Owners; Class Voting.

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to s. 719.301, Florida Statutes, the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to s. 719.301, Florida Statutes, the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners rather than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the cooperative documents provide that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of section 719.106(1)(f), Florida Statutes, that may recall or remove such board member or members.

## 61B-75.007 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the cooperative documents, 10 percent of the voting interests may call a meeting of the unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “cooperative documents” means the recorded articles of incorporation and bylaws of the association, and any amendments to each which are in effect, and any other documents establishing the cooperative.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than ten percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a special unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the special unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled.

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the recall meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule.

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the recall meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the cooperative documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the cooperative documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the cooperative documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date the notice of the recall meeting is mailed or delivered, unless otherwise provided in the cooperative documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative’s name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, record the specific seat the person was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of section 719.301, Florida Statutes, and Rule 61B-75.006, Florida Administrative Code, by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of section 719.106(1)(d)1., Florida Statutes, and rule 61B-75.005, Florida Administrative Code, to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of s. 719.301, Florida Statutes, and rule 61B-75.005, Florida Administrative Code, shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

3. Upon certification of the recall by the board; or

4. Upon certification of the recall by the arbitrator in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of section 719.301, Florida Statutes, and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the cooperative documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by section 719.106(1)(d)1., Florida Statutes, and rule 61B-75.005, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the board. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of any replacement board member shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by section 718.112(2)(k), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, shall be included.

## 61B-75.008 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes;

(d) Provide a space for the person executing the written agreement to state his name, identify his unit, and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the cooperative documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the voting interests executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(c), Florida Rules of Civil Procedure; and,

(h) Become an official record of the association upon service upon the board.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more member or members of the board shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of section 719.301, Florida Statutes, and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill the vacancies in this manner is provided in the cooperative documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by section 719.301, Florida Statutes and rule 61B-75.005, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e. be received by the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than the majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of any replacement board member shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record:

(a) The time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to duly notice and hold a board meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(7) Computation of five full business days. In computing the five full business days prescribed by section 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in section 683.01, Florida Statutes, shall be included.

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Accounting and Financial Reporting Requirements; Budgets, Guarantees, and Reserves, Financial Statements and Reports For Cooperatives

[**61B-76.001 Definitions.**](#_Toc333985969)

[**61B-76.003 Budgets.**](#_Toc333985970)

[**61B-76.004 Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.**](#_Toc333985971)

[**61B-76.005 Reserves.**](#_Toc333985972)

[**61B-76.006 Financial Reporting Requirements.**](#_Toc333985973)

[**61B-76.0062 Transition Financial Statements; Turnover Audit.**](#_Toc333985974)

## 61B-76.001 Definitions.

For the purposes of this chapter the following definitions shall apply:

(1) "Accounting records" include all of the books and records identified in section 719.104(2)(a)9., Florida Statutes, and any other records that identify, measure, record, and/or communicate financial information whether the records are maintained electronically or otherwise.

(2) "Capital expenditure" means any expenditure of funds for:

(a) The purchase of an asset whose useful life is greater than one year in length;

(b) The replacement of an asset whose useful life is greater than one year in length; or

(c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.

(3) "Deferred maintenance" means any maintenance or repair that:

(a) Will be performed less frequently than yearly; and

(b) Will result in maintaining the useful life of an asset.

(4) "Funds" means money and negotiable instruments including for example, cash, checks, notes, and securities.

(5) "Reserves" means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by section 719.106(1)(j)2., Florida Statutes, and any other funds restricted as to use by the cooperative documents or the cooperative association. Funds that are not restricted as to use by section 719.106(1)(j)2., Florida Statutes, the cooperative documents or by the association shall not be considered reserves within the meaning of this rule.

(6) "Turnover" means transfer of association control from developers to non-developer unit owners pursuant to section 719.301, Florida Statutes.

61B-76.002 Accounting Records. (Repealed 1-19-97).

## 61B-76.003 Budgets.

(1) Required elements for estimated operating budgets. The budget for each association shall:

(a) State the estimated common expenses or expenditures on at least an annual basis;

(b) Disclose the beginning and ending dates of the period covered by the budget;

(c) Show the total assessment for each unit type in the proportions or percentages of sharing common expenses provided in the cooperative documents on a monthly basis, or for any other period for which assessments will be due;

(d) Include all estimated common expenses or expenditures of the association including the categories set forth in Section 719.504(20)(c), Florida Statutes. If the estimated common expense for any category set forth in the statute is not applicable, the category shall be listed followed by an indication that the expense is not applicable;

(e) Unless the association maintains a pooled account for reserves required by Section 719.106(1)(j), F.S., the association shall include a schedule stating each reserve account for capital expenditures and deferred maintenance as a separate line item with the following minimum disclosures:

1. The total estimated useful life of the asset;

2. The estimated remaining useful life of the asset;

3. The estimated replacement cost or deferred maintenance expense of the asset;

4. The estimated fund balance as of the beginning of the period for which the budget will be in effect; and

5. The developer’s total funding obligation, when all units are sold, for each converter reserve account established pursuant to Section 719.618, F.S., if applicable.

(f) If the association maintains a pooled account for reserves required by Section 719.106(1)(j), F.S., the association shall include a separate schedule of any pooled reserves with the following minimum disclosures:

1. The total estimated useful life of each asset within the pooled analysis;

2. The estimated remaining useful life of each asset within the pooled analysis;

3. The estimated replacement cost or deferred maintenance expense of each asset within the pooled analysis; and

4. The estimated fund balance of the pooled reserve account as of the beginning of the period for which the budget will be in effect.

(g) Include a separate schedule of any other reserve funds to be restricted by the association as a separate line item with the following minimum disclosures:

1. The intended use of the restricted funds; and

2. The estimated fund balance of the item as of the beginning of the period for which the budget will be in effect.

(2) Unrestricted expense categories. 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.

(3) Record keeping requirements for budgets. The minutes of the association shall reflect the adoption of the budget and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the association.

## 61B-76.004 Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts, cooperative documents, or prospectus, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the voting interests of the unit owners other than the developer. Approval shall be expressed at a meeting of the unit owners, voting in person or by limited proxy; or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this rule.

(2) Guarantee period. The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

(a) The ending date or event shall be the same for all of the unit owners of a cooperative including the unit owners in different phases of phase cooperatives;

(b) The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval; and

(c) The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) Maximum level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each type of unit identified in the cooperative documents. Regardless of the stated dollar amount of the guarantee, assessments charged to a unit owner shall not exceed the maximum obligation of the unit owner based on the total amount of the adopted budget and the unit owner's proportion or percentage of sharing common expenses.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from unit owner assessments at the guaranteed level are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and

(b) No revenues or capital contributions other than regular periodic assessments, and cash payments by the guarantor as provided in paragraph (4)(a) of this rule, shall be utilized for the payment of common expenses during the guarantee period. This restriction includes items such as interest revenue, vending revenue, laundry revenue, other non-assessment revenue and capital contributions.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period; less

(b) The total regular periodic assessments charged to the unit owners other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

## 61B-76.005 Reserves.

(1) Reserves required by statute. Reserves, required by Section 719.106(1)(j), F.S., for capital expenditures and deferred maintenance including roofing, painting, paving, and any other item for which the deferred maintenance expense or replacement cost exceeds $10,000, shall be included in the budget. For the purpose of determining whether the deferred maintenance expense or replacement cost of an item exceeds $10,000, the association may consider each asset of the association separately. Alternatively, the association may group similar or related assets together. For example, an association responsible for the maintenance of two swimming pools, each of which will separately require $6,000 of total deferred maintenance, may establish a pool reserve, but is not required to do so.

(2) Commingling operating and reserve funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

(3) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by Section 719.106(1)(j), F.S., shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves required by Section 719.106(1)(j), F.S., shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

(a) If the association maintains separate reserve accounts for each of the required assets, the amount of the current year contribution to each reserve component shall be the sum of the following calculation:

1. The total amount necessary, if any, to bring a negative account balance to zero; and

2. The total estimated deferred maintenance expense or total estimated replacement cost of the reserve asset less the estimated balance of the reserve account as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the asset. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

(b) If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not 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 are equal to or greater than 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. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(4) Estimating reserves that are not required by statute. Reserves that are not required by Section 719.106(1)(j), F.S., are not required to be based on any specific formula.

(5) Estimating non-converter reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established converter reserves pursuant to Section 719.618, F.S., shall be the sum of:

(a) The developer’s total funding obligation, when all units are sold, for the converter reserve account pursuant to Section 719.618, F.S.; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter obligation, as of the beginning of the period for which the budget will be in effect.

(6) Timely funding. Reserves included in the adopted budget are common expenses and must be fully funded unless properly waived or reduced. Reserves shall be funded in at least the same frequency that assessments are due from the unit owners (e.g., monthly or quarterly).

(7) Restrictions on use. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts have been established.

(8) Annual vote required to waive reserves. Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by Section 719.106(1)(j)2., F.S., shall be effective for only one annual budget.

(9) Developer Voting Restrictions. Prior to turnover the developer may cast votes to waive or reduce reserves during the association's first two fiscal years only, beginning with the date of the incorporation of the cooperative association. During any period that the developer is precluded from casting its votes to waive or reduce the funding of reserves, the approval of a majority of the non-developer voting interest at a duly called meeting of the association shall be required in order to waive or reduce the funding of reserves.

## 61B-76.006 Financial Reporting Requirements.

(1) Basis of accounting. The financial statements required bySections 719.104(4)(b) and 719.301(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in section 719.104(4), Florida Statutes, shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms "generally accepted accounting principles," "standards for accounting and review services," and "generally accepted auditing standards" shall have the same meaning as set forth in Chapter 61H1-20, Florida Administrative Code.

(2) Components. The financial statements required by sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, shall at a minimum include the following components:

(a) Accountant's or Auditor's Report;

(b) Balance Sheet;

(c) Statement of Revenues and Expenses;

(d) Statement of Changes in Fund Balances;

(e) Statement of Cash Flows, direct method; and

(f) Notes to Financial Statements.

(3) Disclosure requirements. The financial statements required by sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:

1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;

2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;

3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;

4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;

5. The manner by which reserve items were estimated, the date the estimates were last made, the cooperative association's policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and

6. If the developer has established converter reserves pursuant to section 719.618(1), Florida Statutes, each converter reserve account shall be identified and include the disclosures required by this rule.

(b) The method by which income and expenses were allocated to the unit owners;

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to section 719.108(9), Florida Statutes, and the amount of each special assessment and the disposition of the funds collected; and

(d) If a guarantee pursuant to section 719.108(8), Florida Statutes, existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of the developer's payments pursuant to the guarantee; and

5. Any financial obligation due to or from the developer resulting from the guarantee.

(4) Developer assessments. All financial reports and financial statements required by Chapter 719, Florida Statutes, shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(5) Financial reports required by section 719.104(4)(a), Florida Statutes. The financial report required by section 719.104(4)(a), Florida Statutes, shall meet the following requirements:

(a) The report shall be prepared on a cash basis;

(b) The report shall include the receipts and expenditures listed in section 719.104(4)(a), Florida Statutes; and

(c) The report shall contain the reserve disclosures required by rule 61B-76.006(3)(a), Florida Administrative Code.

(d) The report shall include the special assessment disclosure required by paragraph 61B-76.006(3)(c), Florida Administrative Code.

(6) Minutes. The minutes of the association shall reflect the number of votes cast by the membership to waive the requirement for audited, reviewed, or compiled financial statements and the type of financial reporting that the association will be preparing and disseminating to the membership.

## 61B-76.0062 Transition Financial Statements; Turnover Audit.

(1) Period covered. The audit required by section 719.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to section 719.301(4), Florida Statutes. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last audit.

(2) Additional disclosure requirements for turnover audits. The financial statements, notes, or supplementary information shall present the revenues and expenses separately for each fiscal year and any interim periods included in the audit. The notes to the financial statements shall contain the following disclosures:

(a) A statement that the financial statements were prepared pursuant to section 719.301(4)(c), Florida Statutes;

(b) A statement of total cash payments made by the developer to the association;

(c) If the developer claims to have paid common expenses of the association that do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and

(d) If a guarantee pursuant to section 719.108(8), Florida Statutes, existed at any time

during the period covered by the audit, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of the developer's payments pursuant to the guarantee; and

5. Any financial obligation due to or from the developer resulting from the guarantee.

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# Resolution Guidelines for Cooperative Developers

[**61B-77.001 Definitions and Purpose.**](#_Toc142349362)

[**61B-77.002 Educational Resolution.**](#_Toc142349363)

[**61B-77.003 Enforcement Resolution and Civil Penalties.**](#_Toc142349364)

## 61B-77.001 Definitions and Purpose.

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted Complaint” means a complaint received by the division from someone with standing to file a complaint containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Alleged repeated violation” means the same or substantially similar recurring conduct cited in an accepted complaint received by the division within two years from the resolution of a previous complaint, the issuance of a final arbitration order or court order, or the entering of a final order by the division regarding that conduct.

(d) “Bad check” means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division’s responsibility to ensure compliance with the provisions of Chapter 719, F.S., and the division’s administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division’s statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 719, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) The division shall apply these resolution guidelines against the developer pursuant to the division’s authority in Section 719.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines, regardless of whether turnover has occurred. The developer shall not pass the cost of affirmative or corrective action or penalties on to the unit owners.

(4) These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-77.001, 61B-77.002, and 61B-77.003, F.A.C., are necessary to explain the division’s education and enforcement policies. These rules are not intended to cover, or be applied to, violations of Chapter 719, F.S., or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-78, F.A.C.

## 61B-77.002 Educational Resolution.

An initial accepted complaint, that is directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 14 calendar days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator’s name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

## 61B-77.003 Enforcement Resolution and Penalty Guidelines.

(1) The division will seek compliance through an enforcement resolution for repeated minor violations, for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. If the division issues a notice to show cause, it will notify the developer of its right to a hearing under Chapter 120, F.S. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

(2) General Provisions—

(a) Rule Not All-Inclusive. This rule chapter contains illustrative violations. It does not, and is not intended to encompass all possible violations of statute or division rule that might be committed by a developer. The absence of any violation from this rule chapter shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule chapter; and

2. The mitigating or aggravating factors listed in this rule chapter.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 719, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division’s authority to order a developer to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-77.003, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-77.003, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule chapter.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors, which will reduce or increase the penalty amounts within the specified range, in determining penalties for both minor and major violations listed in this rule section. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of $5,000. The factors shall be applied against each single count of the listed violation.

(4) The provisions of this rule chapter shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 719, F.S.

(6) In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney’s fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney’s fees, court costs, service fees, collection costs, and damages imposed by law if a developer submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for public harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between $1 and $5 per unit for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with proper documentation. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater. In no event shall a penalty of more than $5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The following are identified as minor violations:

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|  | **Category** | **Statute or Rule Cite** | **Description of Conduct/Violation** |
| 1. | Assessments | 719.108(6), F.S. | Failure to provide within 15 days a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. |
| 2. | Board | 719.1035(1), F.S. | Failure to maintain corporate status of the association. |
| 3. | Board | 719.1055(4)(b), F.S. | Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the cooperative documents. |
| 4. | Board | 719.106(1)(a)3., F.S. | Failure to provide a timely or substantive response to a written inquiry received by certified mail. |
| 5. | Board | 719.106(1)(b)1., F.S. | Action taken at unit owner meeting without quorum. |

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| 6. | Board | 719.106(1)(c), F.S. | Failure to properly notice and conduct board of administration or committee meetings:   * Notice failed to indicate assessment would be considered. * Failure to maintain affidavit by person who gave notice of special assessment meeting. * Failure to ratify emergency action at next meeting. * Failure to adopt a rule regarding posting of notices. * Failure to notice meeting;. * Action on item not on agenda. * Notice did not include agenda. * Failure to allow unit owners to speak or unreasonably restricting the frequency, duration, or manner of unit owner statements at meeting; * Failure to allow unit owners to attend meeting. |
| 7. | Board | 719.106(1)(d), F.S. | Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings. |
| 8. | Board | 719.106(1)(d)2., F.S. | Permitting unit owner action by written agreement without express authority from Chapter 719, F.S., or the cooperative governing documents. |
| 9. | Board | 719.106(1)(h), F.S. | Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the bylaws. |
| 10. | Board | 719.3026(1), F.S. | Failure to obtain competitive bids on contracts that exceed five percent of the association’s budget. |
| 11. | Board | 719.106(1)(b)5., F.S. | Failure to provide a speaker phone for board or committee meetings held by teleconference. |
| 12. | Board | 719.106(1)(c), F.S.,  61B-75.004, F.A.C. | Failure to allow a unit owner to tape record or video tape meetings. |
| 13. | Budgets | 719.106(1)(e), F.S. | Failure to timely notice budget meeting. Failure to timely deliver proposed budget. |
| 14. | Budgets | 719.106(1)(j)1., F.S.  719.504(20)(c), F.S. | Failure to include applicable line items in proposed budget. |
| 15. | Budgets | 61B-76.003(1)(b), F.A.C. | Failure to disclose the beginning and ending dates of the period covered by the budget. |
| 16. | Budgets | 61B-76.003(1)(c), F.A.C. | Failure to disclose periodic assessments for each unit type in proposed budget. |
| 17. | Development | 719.301(2), F.S. | Failure to file name and address of first non-developer board member. |

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| 18. | Development | 719.301(4)(a)1., F.S. | Failure to deliver cooperative documents and all amendments thereto upon transfer of association control. |
| 19. | Development | 719.301(4)(a)2., F.S. | Failure to deliver articles of incorporation upon transfer of association control. |
| 20. | Development | 719.301(4)(a)3., F.S. | Failure to deliver the bylaws upon transfer of association control. |
| 21. | Development | 719.301(4)(a)5., F.S. | Failure to deliver house rules upon transfer of association control. |
| 22. | Development | 719.301(4)(b), F..S. | Failure to deliver resignations of officers and board members upon transfer of association control. |
| 23. | Development | 719.301(4)(i), F..S. | Failure to deliver copies of certificates of occupancy upon transfer of association control. |
| 24. | Development | 719.301(4)(j), F.S. | Failure to deliver permits upon transfer of association control. |
| 25. | Development | 719.301(4)(l), F.S. | Failure to deliver unit owner roster upon transfer of association control. |
| 26. | Elections | 61B-75.005(8),F.A.C. | Failure to provide space for name, unit number, and signature on outer envelope. |
| 27. | Elections | 61B-75.005(9), F.A.C. | Failure to list candidates alphabetically by surname on the ballot. |
| 28. | Elections | 61B-75.005(10)(b), F.A.C. | Improper verification of outer envelopes. |
| 29. | Records | 719.104(2)(a)2., F.S. | Failure to maintain a copy of the cooperative documents. |
| 30. | Records | 719.104(2)(a)5., F.S. | Failure to maintain a current and complete unit owner roster. |
| 31. | Records | 719.104(2)(a)12., F.S.  F.S. | Failure to maintain or annually update the question and answer sheet. |
| 32. | Records | 719.104(2)(a)13., F.S. | Failure to maintain other association records related to the operation of the association. |
| 33. | Records | 719.104(8)(b), F.S. | Failure to record a vote or an abstention in the minutes for each board member present at the board meeting. |
| 34. | Records | 61B-76.003(3), F.A.C. | Failure to reflect the adoption of the budgeting meeting minutes. |
| 35. | Reporting | 61B-76.006(3)(a)5., F.A.C. | Failure to disclose in the annual financial statements or turnover audit the manner by which reserve items were estimated and/or the date the estimates were last made. |
| 36. | Reporting | 61B-76.006(3)(b), F.A.C. | Failure to disclose the method of allocating income and expenses in the annual statements or turnover audit. |
| 37. | Reporting | 61B-76.006(4), F.A.C. | Failure to show developer assessments separately from other assessment revenues in the annual financial report (statements) or turnover audit. |

(b)  **Major Violations.** The following violations shall be considered major due to their increased potential for public harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with proper documentation. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $500, whichever amount is greater. In no event shall a penalty of more than $5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The penalties for each violation are as follows:

Level 1: $10 – $18 per unit.

Level 2: $20 – $50 per unit.

Level 3: $100 – $300 for each unit offered/created; deposit or contract.

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|  | **Category** | **Statute or Rule Cite** | **Description of Conduct/Violation** | **Penalty Level** |
| 1. | Accounting | 719.104(2)(a)9., F.S. | Insufficient or incomplete accounting records. | 2 |
| 2. | Assessing | 719.106(1)(g), F.S. | Failure to assess at sufficient amounts to meet expenses. | 1 |
| 3 | Assessing | 719.106(1)(g), F.S. | Collecting assessments less frequently than quarterly. | 1 |
| 4. | Assessing | 719.107(2), F.S. | Failure to assess based upon the shares stated in the cooperative documents. | 2 |
| 5. | Assessing | 719.108(3), F.S. | Failure to charge interest on past due assessments. | 2 |
| 6. | Assessing | 719.108(1), (8), F.S. | Developer or other owner improperly excused from paying assessments. | 2 |
| 7. | Board | 719.104(3), F.S. | Failure to insure the association property. | 2 |
| 8. | Board | 719.104(5), F.S. | Improper use fee. | 1 |
| 9. | Board | 719.104(8)(b), F.S. | Use of proxies or improper use of secret ballots by board members at a board meeting. | 1 |
| 10. | Board | 719.105, F.S.  719.109(1), F.S. | Unit owner denied access to unit or to common areas. | 1 |
| 11. | Board | 719.1055, F.S. | Improperly amending the cooperative documents. | 1 |
| 12. | Board | 719.106(1)(a)1., F.S. | Compensating officers or members of the board without express authority from the cooperative governing documents. | 1 |
| 13. | Board | 719.106(1), F.S. | Allowing ineligible person to serve on board of administration. | 2 |
| 14. | Board | 719.106(1)(b)2., F.S. | Improper use of general proxies. Use of non-conforming limited proxies. | 1 |
| 15. | Board | 719.106(1)(c), F.S. | Excluding unit owners from board or committee meetings. | 1 |
| 16. | Board | 719.106(1)(d), F.S. | Failure to hold annual meeting. | 2 |
| 17. | Board | 719.106(1)(f), F.S. | Improper removal of board member. | 1 |
| 18. | Board | 719.106(1)(h), F.S. | Improperly amending the association bylaws. | 2 |
| 19. | Board | 719.106(1)(i), F.S. | Requiring transfer fees or security deposits without express authority from the cooperative governing documents. Requiring excessive transfer fees. | 1 |
| 20. | Board | 719.106(1)(k), F.S. | Failure to maintain adequate fidelity bonding for all persons who control or disburse association funds. | 2 |
| 21. | Board | 61B-75.005(13), F.A.C. | Improperly filling a vacancy of an unexpired term on the board. | 1 |
| 22. | Board | 719.108(3), F.S. | Levying late fees without express authority from the cooperative governing documents. | 1 |
| 23. | Board | 719.115(3), F.S. | Failure to timely notify unit owners of legal action. | 1 |
| 24. | Board | 719.303(3),(4),(5),(6), F.S. | Imposing fines without proper notice. Imposing excessive fines. Improper suspension of use rights and voting rights; failure to provide proper notice. | 1 |
| 25. | Budgets | 719.106(1)(e), F.S. | Failure to propose/adopt budget for a given year. | 2 |
| 26. | Budgets | 719.106(1)(e)4., F.S. | Developer increased assessments more than 115% without approval. | 1 |
| 27. | Budgets | 61B-76.003(1)(e), 5., F.A.C. | Failure to disclose converter reserve funding. | 1 |

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| 28. | Budgets | 61B-76.003(1)(e), (f),(g) F.A.C. | Failure to include reserve schedule in the proposed budget. | 1 |
| 29. | Budgets | 61B-76.003(1)(e),(f), F.A.C. 61B-76.005(1), (5), F.A.C. | Failure to include a required reserve item in proposed budget. | 1 |
| 30. | Budgets | 719.106(1)(j)2., F.S.  61B-76.005(3), (5), F.A.C. | Improper calculation of reserve requirements. | 1 |
| 31. | Commingle | 719.104(7), F.S. | Commingling association funds with non-association funds. | 2 |
| 32. | Commingle | 719.104(7), F.S. | Association funds deposited in account not in association’s name. | 1 |
| 33. | Commingle | 719.104(7), F.S.; 61B-76.005(2), F.A.C. | Commingling reserve funds with operating funds. | 1 |
| 34. | Common Expenses | 719.107(1), F.S. | Using association funds for other than common expenses. | 2 |
| 35. | Converter Reserves | 719.618(1), F.S. | Failure to calculate converter reserves properly. | 2 |
| 36. | Converter Reserves | 719.618(2), F.S. | Failure to fund converter reserves in a timely manner. | 2 |
| 37. | Converter Reserves | 719.618(3)(b), F.S. | Improper use of converter reserves. | 1 |
| 38. | Converter Reserves | 61B-76.003(1)(e)5., F.A.C.F.A.C.F.A.C. | Failure to include converter reserve disclosures in the proposed budget. | 1 |
| 39. | Development | 719.202(1), F.S. | Developer using an alternative assurance, in lieu of an escrow account, without the prior approval of the Director. | 3 |
| 40. | Development | 719.202(1), F.S. | Failure to place purchase deposits in escrow. | 3 |
| 41. | Development | 719.202(6), F.S. | Failure to place reservation deposits in escrow. | 3 |
| 42. | Development | 719.301(1), (2), (4), F.S. | Failure to transfer association control. 2 | 2 |
| 43. | Development | 719.301(4)(a)4., F.S. | Failure to deliver the minute books upon transfer of association control. | 2 |
| 44. | Development | 719.301(4)(c), F.S. | Failure to deliver the financial records (other than the audit) within 90 days of transfer of association control. | 2 |
| 45. | Development | 719.301(4)(d), F.S. | Failure to deliver the association funds upon transfer of association control. | 2 |
| 46. | Development | 719.301(4)(e), F.S. | Failure to deliver all tangible personal property of the association upon transfer of association control. | 2 |
| 47. | Development | 719.301(4)(f), F.S. | Failure to deliver a copy of the plans, specifications and affidavit upon transfer of association control. | 1 |
| 48. | Development | 719.301(4)(g), F.S. | Failure to deliver the list of contractors upon transfer of association control. | 1 |
| 49. | Development | 719.301(4)(h), F.S. | Failure to deliver copies of insurance policies upon transfer of association control. | 1 |
| 50. | Development | 719.301(4)(k), F.S. | Failure to deliver copies of all warranties upon transfer of association control. | 1 |
| 51. | Development | 719.301(4)(m), F.S. | Failure to deliver copies of all leases to which the association is a party upon transfer of association control. | 1 |
| 52. | Development | 719.301(4)(n), (o), F.S. | Failure to deliver copies of all contracts involving the association upon transfer of association control. | 1 |
| 53. | Development | 719.403(1), F.S. | Continuing to develop phases after expiration of phase deadline. | 3 |
| 54. | Development | 719.403(1), (2), F.S. | Improperly amending cooperative documents to provide for phased development. | 2 |
| 55. | Development | 719.502(2)(a), F.S. 61B-79.001(2)(b), F.A.C. | Accepting reservation deposits prior to filing reservation program with the division. | 3 |
| 56. | Development | 719.502(2)(a), F.S.; 61B-79.001(2)(a), (3), F.A.C. | Offering sales contracts prior to filing with division. | 3 |
| 57. | Development | 719.502(3), F.S. 61B-79.003(2), F.A.C. | Offering sales contracts on units within a phase prior to filing phase documents with the division. | 3 |
| 58. | Development | 719.502(3), F.S.; 61B-79.003(2), F.A.C. | Failure to file amendments to documents previously filed with the division. | 1 |
| 59. | Development | 719.503(1)(a), F.S.; 61B-79.004(9), F.A.C. | Using sales contracts without required disclosures. | 3 |
| 60. | Development | 719.503(1)(b), F.S. | Failure to provide disclosure documents to purchasers. | 3 |
| 61. | Development | 719.503(1)(b), F.S. | Failure to allow purchaser to rescind contract upon receipt of timely notice from purchaser. | 3 |

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| 62. | Development | 61B-79.001(3), F.A.C. | Closing on sales of units prior to the division’s approval of the filing. | 3 |
| 63. | Development | 719.504(10), F.S. | Failure to disclose rental program in prospectus. | 1 |
| 64. | Elections | 719.106(1)(d), F.S.; 719.301(1), (2), F.S.; 61B-75.005(2), F.A.C. | Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold. | 2 |
| 65. | Elections | 719.106(1)(d)1., F.S. 61B-75.005(3), F.A.C. | Use of nomination procedures in an election. | 2 |
| 66. | Elections | 61B-75.005(2), F.A.C. | Election not held at time and place of annual meeting. | 1 |
| 67. | Elections | 719.106(1)(d)1.a., F.S. ;  61B-75.005(4), F.A.C. | Failure to provide, or timely provide, first notice of election. | 2 |
| 68. | Elections | 719.301(2), F.S. | Failure to provide, or timely provide, first notice of turnover election. | 2 |
| 69. | Elections | 719.106(1)(d)1.a., F.S.;  61B-75.005(7), (8), F.A.C. | Failure to provide, or timely provide, second notice of election or omitting ballots, envelopes, and candidate information sheets. | 1 |
| 70. | Elections | 61B-75.005(8), F.A.C. | Voters allowed to rescind or change their previously cast ballots. | 1 |
| 71. | Elections | 719.106(1)(d)1.a., F.S. 61B-75.005(7), F.A.C. | Association altered or edited candidate-information sheets. | 2 |
| 72. | Elections | 719.106(1)(d)1., F.S. | Failure to use ballots or voting machines. | 2 |
| 73. | Elections | 719.106(1)(d)1.a., F.S. 61B-75.005(5), F.A.C. | Ballot included candidate who did not timely submit notice of candidacy. | 2 |
| 74. | Elections | 61B-75.005(6), F.A.C. | Failure to provide candidate a receipt for personally delivered written notice of candidacy. | 1 |
| 75. | Elections | 61B-75.005(7), F.A.C. | Distributing candidate information sheets consisting of more than one side of a page. | 1 |
| 76. | Elections | 61B-75.005(8), F.A.C. | Second notice of election included comments by board about candidates. | 2 |
| 77. | Elections | 61B-75.005(10)(a), F.A.C. | Ballots not counted by impartial committee. | 1 |
| 78. | Elections | 61B-75.005(10)(a), F.A.C. | Inner envelopes not placed in separate receptacle before being opened. | 2 |

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| 79. | Elections | 719.106(1)(d)1.a., F.S.;  61B-75.005(9), F.A.C. | Failure to include all timely submitted names of eligible candidates on the ballot. | 1 |
| 80. | Elections | 61B-75.005(9), F.A.C. | Ballots not uniform. Ballots identify voter. Ballots included space for write-in candidate. | 2 |
| 81. | Elections | 61B-75.005(10), F.A.C. | Outer envelopes not checked against list of eligible voters. | 1 |
| 82. | Elections | 61B-75.005(10)(a), (b), F.A.C. | Counting ineligible ballots. | 1 |
| 83. | Elections | 61B-75.005(10)(a), F.A.C. | Failure to count properly cast ballots. | 1 |
| 84. | Elections | 61B-75.005(10), F.A.C. | Outer envelopes opened prior to election meeting. Outer envelopes not opened in presence of unit owners. | 2 |
| 85. | Elections | 61B-75.005(10)(a), F.A.C. | Not counting ballots in the presence of unit owners. | 2 |
| 86. | Elections | 61B-75.005(10)(b), F.A.C. | Failure to notice meeting to verify outer-envelope information. | 1 |
| 87. | Elections | 61B-75.005(10)(c), F.A.C. | Failure to hold, or timely hold, runoff election. | 2 |
| 88. | Elections | 61B-75.005(10)(a), F.A.C. | No blank ballots available at election meeting. | 2 |
| 89. | Final Order | 719.501(1)(d)4., F.S. | Failure to comply with final order of the division. | 2 |
| 90. | Guarantee | 719.108(8), F.S.; 61B-76.004(1), F.A.C. | Guarantee not properly established. | 2 |
| 91. | Guarantee | 719.108(8)(a), F.S.; 61B-76.004(3), F.A.C. | Improperly assessing unit owners. | 2 |
| 92. | Guarantee | 719.108(8)(a), F.S.; 61B-76.004(4),(5), F.A.C. | Failure to advance sufficient cash. | 2 |
| 93. | Guarantee | 719.108(8)(b), F.S. 61B-76.004(4), F.A.C. | Expending capital contributions or special assessment funds during guarantee period. | 2 |
| 94. | Guarantee | 61B-76.004(2), F.A.C. | Guarantee period unclear/not specified, not properly extended. | 2 |
| 95. | Records | 719.104(2)(a)4., F.S. | Failure to maintain minutes of meetings. | 1 |
| 96. | Records | 719.104(2)(a)6., F.S. | Failure to maintain a copy of a current insurance policy. | 1 |

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| 97. | Records | 719.104(2)(a)7., F.S. | Failure to maintain copy of management agreement or other contract under which the association has obligations. | 1 |
| 98. | Records | 719.104(2)(a)8., F.S. | Failure to maintain bills of sale or transfer. | 1 |
| 99. | Records | 719.104(2)(a)10., F.S. | Failure to maintain election or voting materials for one year. | 1 |
| 100. | Records | 719.104(2)(a)11., F.S. | Failure to maintain rental records. | 1 |
| 101. | Records | 719.104(2)(c), F.S.  719.107(1)(a), F.S. | Requiring a unit owner to pay a fee for access to association records. | 1 |
| 102. | Records | 719.104(2)(b), F.S. | Failure to maintain records within Florida. | 2 |
| 103. | Records | 719.104(2)(b), (c), F.S. | Failure to provide access to records. Failure to allow scanning or copying of records. | 1 |
| 104. | Records | 719.104(2)(e), F.S. | Failure of outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. | 2 |
| 105. | Reporting | 719.104(4), F.S. 61B-76.006(6), (8), F.A.C | Failure to provide, or timely provide, the annual financial report or statements. | 2 |
| 106. | Reporting | 719.104(4)(b), F.S.; 61B-76.006(9)(b), F.A.C. | Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two years of operation. | 2 |
| 107. | Reporting | 719.301(4)(c), F.S.; 61B-76.0062(1), F.A.C. | Failure to provide, or timely provide, turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period of control. | 2 |
| 108. | Reporting | 61B-76.006(1), F.A.C. | Failure to prepare annual/turnover financial statements using fund accounting. Failure to prepare annual/turnover financial statements on accrual basis. | 1 |
| 109. | Reporting | 719.104(4)(a), F.S.  61B-76.006(1), F.A.C. | Failure to prepare annual/turnover financial statements in accordance with Generally Accepted Accounting Principles (GAAP).  Failure to have reviewed or audited annual/turnover financial statements prepared by a Florida licensed CPA. | 2 |

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| 110. | Reporting | 61B-76.006(2), F.A.C. | Failure to include one or more components of the annual/turnover annual/turnover financial statements (incomplete). | 1 |
| 111. | Reporting | 61B-76.006(3)(a)1.-5.., F.A.C.; F.A.C. | Failure to make significant reserve fund disclosures in the annual/turnover financial statements. | 1 |
| 112. | Reporting | 61B-76.006(3)(a)6., F.A.C. | Failure to include converter reserve disclosures in the annual financial statements. | 1 |
| 113. | Reporting | 61B-76.006(5)(c), F.A.C. | Failure to include converter reserve disclosures in the annual financial report. | 1 |
| 114. | Reporting | 61B-76.006(5)(c), F.A.C. | Failure to include the required reserve fund disclosures in the annual financial report. | 1 |
| 115. | Reporting | 61B-76.006(3)(c), F.A.C. | Failure to include the special assessment disclosures in the annual financial statements. | 1 |
| 116. | Reporting | 61B-76.006(3)(d), F.A.C.F.A.C. | Incomplete or missing guarantee disclosures in the annual financial statements. | 1 |
| 117. | Reporting | 61B-76.0062(2)(d), F.A.C. | Incomplete or missing guarantee disclosures in the turnover financial statements. | 1 |
| 118. | Reporting | 61B-76.006(3)(d)5., F.A.C. | Failure to properly calculate guarantor’s final obligation. | 2 |
| 119. | Reporting | 61B-76.006(5)(a), (b), F.A.C. | Failure to prepare the annual financial report on a cash basis. | 1 |
| 120. | Reporting | 719.104(4)(c), F.S. 61B-76.006(5)(b), F.A.C. | Failure to include in the annual financial report specified receipt or expenditure items. | 1 |
| 121. | Reporting | 61B-76.006(8), F.A.C. | Providing lower level of annual financial reporting than required. | 2 |
| 122. | Reporting | 61B-76.0062(2), F.A.C. | Failure to present revenues and expenses for each fiscal year and interim period. | 2 |
| 123. | Reporting | 61B-76.0062(2), F.A.C. | Failure to include in the turnover audit a statement of total cash payments made by the developer to the association. | 2 |
| 124 | Reserves | 719.106(1)(j)2., F.S.; 61B-76.005(6), F.A.C. | Failure to fund reserves in a timely manner. Failure to fully fund reserves. | 1 |
| 125 | Reserves | 719.106(1)(j)2., F.S.; 61B-76.005(6), (8), F.A.C. | Failure to follow proper method to waive or reduce reserve funding. | 1 |

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| 126 | Reserves | 719.106(1)(j)2., F.S.; 61B-76.005(9), F.A.C. | Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation. | 1 |
| 127 | Reserves | 719.106(1)(j)3., F.S.; 61B-76.005(7), F.A.C. | Using reserve funds for other purposes without unit owner approval. | 2 |
| 128 | Special Assessment | 719.108(9), F.S. | Using special assessment funds for intended purposes. | 1 |
| 129 | Special Assessment | 719.108(9), F.S. | Failure to state purpose of special assessment in the special assessment notice. | 1 |

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# Association Fee and Mailing Address; Cooperative Resolution Guidelines for Unit Owner Controlled Associations

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## 61B-78.001 Association Fee; Mailing Address; Retrofitting.

(1) The annual fee shall be paid as follows:

(a) The division shall provide to the association an annual fee statement. The failure to receive the annual fee statement shall not relieve the association of the obligation to pay the fee. Annual fees shall be paid online at [www.MyFloridaLicense.com](http://www.MyFloridaLicense.com) or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(b) If the documents are amended during the year to alter the number of units, the association shall pay the annual fee on the highest number of units during the year.

(2) The association shall, within 30 days of a change of address, notify the division in writing of its new mailing address.

(3) Each association that votes to forego retrofitting of the common areas or units of a residential cooperative with a fire sprinkler system, handrails, or guardrails shall report the voting results and certification information for each affected cooperative to the division on DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES, incorporated herein by reference and effective 11-30-04. If retrofitting has been undertaken by a residential cooperative, the association shall report the per-unit cost of such work to the division on DBPR Form CP 6000-1. DBPR Form CP 6000-1 must be filed with the division within 60 days of recordation of the retrofitting waiver certificate in the public records where the cooperative is located or upon commencement of the retrofitting project. DBPR Form CP 6000-1 may be obtained by writing the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, FL 32399-1030. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system and the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year.

(4) (a) As provided for by Section 719.1055, F.S., any vote to waive a retrofitting requirement shall be held at a duly called meeting of the membership, with members voting live and in person, or may be conducted without a membership meeting by written consents, or may be conducted by a combination of the two with the association counting written consents received along with votes cast live and in person at a duly called meeting of the membership. Effective October 1, 2004, retrofitting requirements related to a fire sprinkler system may also be waived by the use of limited proxies cast at a duly called meeting of the membership.

(b) The written consent form utilized by the association must contain a space for the authorized voter to sign and must identify the unit owned. Voting by written consent may be utilized by an association regardless of whether the cooperative documents specifically permit voting by written consent.

## 61B-78.002 Definitions and Purpose.

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted complaint” means a complaint received by the division from someone with standing to file a complaint containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Alleged repeated violation” means the same or substantially similar recurring conduct cited in an accepted complaint received by the division within two years from the resolution of a previous complaint, the issuance of a final arbitration order or court order, or the entering of a final order by the division regarding that conduct.

(d) “Association,” for purposes of these guidelines, shall have the same meaning as stated in Section 719.103(2), F.S.

(e) “Bad check” means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division’s responsibility to ensure compliance with the provisions of Chapter 719, F.S., and the division’s administrative rules. The division recognizes that unit owner controlled associations are comprised of volunteer members who, in most circumstances, are lay people without specialized knowledge of the complex statutory and administrative rule structure of Chapter 719, F.S. Based upon this understanding, the division, as set forth in these rules, will first and foremost attempt to seek statutory and rule compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the association, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division’s statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 719, F.S, and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) These resolution guidelines are promulgated pursuant to the division’s authority in Section 719.501(1)(d), (f), and (m), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-78.002, 61B-78.003, and 61B-78.004, F.A.C., are necessary to explain the division’s education and enforcement policies. These rules are not intended to cover, or be applied to, violations of Chapter 719, F.S., or the administrative rules by a cooperative developer as defined by Section 719.103(16), F.S. Such violations shall be strictly governed by the provisions of Chapter 61B-77, F.A.C., and Section 719.301(5), F.S.

## 61B-78.003 Educational Resolution.

(1) The educational resolution process, as detailed in these rules, is only applicable to unit owner controlled associations.

(2) Alleged Initial Violation. An initial accepted complaint, directed at an association and involving a possible violation identified as minor in these guidelines, will be resolved as follows: The division will review the matter and will contact the association board by letter or telephone regarding the complaint. The division will provide educational materials or guidance to the association board to assist it with addressing the subject matter of the complaint and provide the association with the opportunity to respond. The division will notify the complainant of the educational resolution and the division’s complaint file will be closed.

(3) Alleged Repeated Minor Violations. A subsequent accepted complaint that is directed at the same association involving a possible violation identified as minor in these guidelines, will be resolved as follows: If the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association 14 calendar days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator’s name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint that is directed at an association and involving a possible violation identified as major in these guidelines, will be resolved as follows: If the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association 14 calendar days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator’s name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

## 61B-78.004 Enforcement Resolution and Penalty Guidelines.

(1) The division will seek compliance through an enforcement resolution for repeated minor or major violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division. If the division issues a notice to show cause, it will notify the association of its right to a hearing under Chapter 120, F.S. The guidelines in this rule section are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule section contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by an association. The absence of any violation from this rule section shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule section, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule section; and

2. The mitigating or aggravating factors listed in this rule section.

(b) Violations Included. This rule section applies to all statutory and rule violations subject to a penalty authorized by Chapter 719, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division’s authority to order an association to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or $100, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-78.004, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-78.004, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule section.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors, which will reduce or increase the penalty amounts within the specified range, in determining penalties for both minor and major violations listed in this rule section. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of $5,000. The factors shall be applied against each single count of the listed violation.

(4) The provisions of this rule section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 719, F.S.

(6) In addition to the penalties established in this rule section, the division reserves the right to seek to recover any other costs, penalties, attorney fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney fees, court costs, service fees, collection costs, and damages imposed by law if an association submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for public harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between $1 and $5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with proper documentation. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $100, whichever amount is greater. In no event shall a penalty of more than $2,500 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The following are identified as minor violations:

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| **No.** | **Category** | **Statute or Rule Cite** | **Description of Conduct/Violation** |
| 1. | Assessments | 719.108(6), F.S. | Failure to provide within 15 days a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. |
| 2. | Board | 719.1055(4)(b), F.S. | Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the cooperative documents. |
| 3. | Board | 719.1035(1), F.S. | Failure to maintain corporate status of the association. |
| 4. | Board | 719.106(1)(a)2., F.S. | Failure to provide a timely or substantive response to a written inquiry received by certified mail. |
| 5. | Board | 719.106(1)(b)1., F.S. | Action taken at unit owner meeting without quorum. |
| 6. | Board | 719.106(1)(c), F.S. | Failure to properly notice and conduct board of administration or committee meetings:   * Notice failed to indicate assessment would be considered. * Failure to maintain affidavit by person who gave notice of special assessment meeting. * Failure to ratify emergency action at next meeting. * Failure to adopt a rule regarding posting of notices. * Failure to notice meeting. * Action on item not on agenda. * Notice did not include agenda. * Failure to allow unit owners to speak or unreasonably restricting the frequency, duration, or manner of unit owner statements at meeting. * Failure to allow unit owners to attend meeting. |
| 7. | Board | 719.106(1)(d), F.S. | Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings. |
| 8. | Board | 719.106(1)(d)2., F.S. | Permitting unit owner action by written agreement without express authority from Chapter 719, F.S., or the cooperative governing documents. |
| 9. | Board | 719.106(1)(h), F.S. | Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the bylaws. |
| 10. | Board | 719.3026(1), F.S. | Failure to obtain competitive bids on contracts that exceed five percent of the association’s budget. |

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| 11. | Board | 719.106(1)(b)5., F.S. | Failure to provide a speaker phone for board or committee meetings held by teleconference. |
| 12. | Board | 719.106(1)(c), F.S. 61B-75.004, F.A.C. | Failure to allow a unit owner to tape record or video tape meetings. |
| 13. | Budgets | 719.106(1)(e), F.S. | Failure to timely notice budget meeting. Failure to timely deliver proposed budget. |
| 14. | Budgets | 719.106(1)(e)2., F.S. | Failure of board to call a unit owners’ meeting to consider alternate budget. |
| 15. | Budgets | 719.106(1)(j)1., F.S.  719.504(20)(c), F.S. | Failure to include applicable line items in proposed budget. |
| 16. | Budgets | 61B-76.003(1)(b), F.A.C. | Failure to disclose the beginning and ending dates of the period covered by the budget. |
| 17. | Budgets | 61B-76.003(1)(c), F.A.C. | Failure to disclose periodic assessments for each unit type in proposed budget. |
| 18. | Elections | 61B-75.005(8), F.A.C. | Failure to provide space for name, unit number, and signature on outer envelope. |
| 19. | Elections | 61B-75.005(9), F.A.C. | Failure to list candidates alphabetically by surname on the ballot. |
| 20. | Elections | 61B-75.005(10)(b), F.A.C. | Improper verification of outer envelopes. |
| 21. | Records | 719.104(2)(a)2., F.S. | Failure to maintain a copy of the cooperative documents. |
| 22. | Records | 719.104(2)(a)5., F.S. | Failure to maintain a current and complete unit owner roster. |
| 23. | Records | 719.104(2)(a)12., F.S. | Failure to maintain or annually update the question and answer sheet. |

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| 24. | Records | 719.104(2)(a)13., F.S. | Failure to maintain other association records related to the operation of the association. |
| 25. | Records | 719.104(8)(b), F.S. | Failure to record a vote or an abstention in the minutes for each board member present at the board meeting. |
| 26. | Records | 61B-76.003(3), F.A.C. | Failure to reflect the adoption of the budget in meeting minutes. |
| 27. | Reporting | 61B-76.006(3)(a)5., F.A.C. | Failure to disclose in the annual financial statements the manner by which reserve items were estimated and/or the date the estimates were last made. |
| 28. | Reporting | 61B-76.006(3)(b), F.A.C. | Failure to disclose the method of allocating income and expenses in the annual financial statements. |

(b) **Major Violations.** The following violations shall be considered major due to their increased potential for public harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with proper documentation. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or $100, whichever amount is greater. In no event shall a penalty of more than $5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The penalties for each violation are as follows:

Level 1: $6 – $10 per unit.

Level 2: $12 – $20 per unit.

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| **No.** | **Category** | | **Statute or Rule Cite** | **Description of Conduct/Violation** | **Penalty Level** | |
| 1. | Accounting Records | | 719.104(2)(a)9., F.S. | Insufficient or complete accounting records. | 2 | |
| 2. | Assessing | | 719.106(1)(g), F.S. | Failure to assess at sufficient amounts to meet expenses. | 1 |
| 3. | Assessing | | 719.106(1)(g), F.S. | Collecting assessments less frequently than quarterly. | 1 | |
| 4. | Assessing | | 719.107(2), F.S. | Failure to assess based upon the shares stated in the cooperative documents. | 2 | |
| 5. | Assessing | | 719.108(3), F.S. | Failure to charge interest on past due assessments. | 2 | |
| 6. | Assessing | | 719.108(1), (8), F.S. | Developer or other owner improperly excused from paying assessments. | 2 | |
| 7. | | Board | 719.104(3), F.S. | Failure to insure the association property. | 2 |
| 8. | | Board | 719.104(5), F.S. | Improper use fee. | 1 |
| 9. | | Board | 719.104(8)(b), F.S. | Use of proxies or improper use of secret ballots by board members at a board meeting. | 1 |
| 10. | | Board | 719.105, F.S.  719.109(1), F.S. | Unit owner denied access to unit or to common areas. | 1 |
| 11. | | Board | 719.1055, F.S. | Improperly amending the cooperative documents. | 2 |
| 12. | | Board | 61B-75.005(13), F.A.C. | Improperly filling a vacancy of an unexpired term on the board. | 1 |
| 13. | | Board | 719.106(1)(a)1., F.S. | Compensating officers or members of the board without express authority from the cooperative governing documents. | 2 |
| 14. | | Board | 719.106(1),F.S. | Allowing ineligible person to serve on board of administration. | 2 |
| 15. | | Board | 719.106(1)(b)2., F.S. | Improper use of general proxies. Use of non-conforming limited proxies. | 1 |
| 16. | | Board | 719.106(1)(c), F.S. | Excluding unit owners from board or committee meetings. | 1 |
| 17. | | Board | 719.106(1)(d), F.S. | Failure to hold annual meeting. | 2 |
| 18. | | Board | 719.106(1)(f), F.S. | Improper removal of board member. | 1 |
| 19. | | Board | 719.106(1)(h), F.S. | Improperly amending the association bylaws. | 2 |
| 20. | | Board | 719.106(1)(i), F.S. | Requiring transfer fees or security deposits without express authority from the cooperative governing documents. Requiring excessive transfer fees. | 1 |
| 21. | | Board | 719.106(1)(k), F.S. | Failure to maintain adequate fidelity bonding for all persons who control or disburse association funds. | 2 |
| 22. | | Board | 719.108(3), F.S. | Levying late fees without express authority from the cooperative governing documents. | 1 |
| 23. | | Board | 719.115(3), F.S. | Failure to notify, or timely notify, unit owners of legal action. | 1 |
| 24 | | Board | 719.303(3),(4),(5),(6), F.S. | Imposing fines without proper notice. Imposing excessive fines. Improper suspension of use rights and voting rights; failure to provide proper notice. | 1 |
| 25. | | Budgets | 719.106(1)(e), F.S. | Failure to propose/adopt budget for a given year. | 2 |
| 26. | | Budgets | 61B-76.003(1)(e), 5., F.A.C. | Failure to disclose converter reserve funding. | 1 |
| 27. | | Budgets | 61B-76.003(1)(e), (f), (g), F.A.C. | Failure to include reserve schedule in the proposed budget. | 1 |
| 28. | | Budgets | 61B-76.003(1)(e),(f), F.A.C.  61B-76.005(1), F.A.C. | Failure to include a required reserve item in proposed budget. | 1 |
| 29. | | Budgets | 719.106(1)(j)2., F.S.  61B-76.005(3), F.A.C. | Improper calculation of reserve requirements. | 1 |
| 30. | | Commingle | 719.104(7), F.S. | Commingling association funds with non-association funds. | 2 |
| 31. | | Commingle | 719.104(7), F.S. | Association funds deposited in account not in association’s name. | 1 |
| 32. | | Commingle | 719.104(7), F.S. 61B-76.005(2), F.A.C. | Commingling reserve funds with operating funds. | 1 |
| 33. | | Common Expenses | 719.107(1), F.S. | Using association funds for other than common expenses. | 2 |
| 34. | | Converter Reserves | 719.618(3)(b), F.S. | Improper use of converter reserves. | 1 |
| 35. | | Converter Reserves | 61B-76.003(1)(e)5., F.A.C | Failure to include converter reserve disclosures in the proposed budget. | 1 |
| 36. | | Elections | 719.106(1)(d), F.S. 61B-75.005(2), F.A.C. | Failure to hold election. | 2 |
| 37. | | Electons | 61B-75.005(2), F.A.C. | Election not held at time and place of annual meeting. | 1 |
| 38. | | Elections | 719.106(1)(d)1., F.S.  61B-75.005(3), F.A.C. | Use of nomination procedures in an election. | 2 |
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# Filings

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## 61B-79.001 Developer, Filing.

(1) In determining whether a developer has offered a contract for sale or lease pursuant to Section 719.502(2), F.S., it shall be relevant although not dispositive, whether and the extent to which the developer advertised, induced, solicited, or attempted to encourage any person to acquire an interest in a cooperative unit, either proposed or existing, if undertaken for gain or profit.

(2) (a) Except in the case of a reservation program, a developer of a residential cooperative shall file with the division one copy of each document required by Sections 719.503 and 719.504, F.S. The filing shall occur at the time the cooperative is created, or prior to any offering of a cooperative unit to the public, whichever occurs first. As to conversions from mobile home parks to cooperatives, the association must file with the division as provided in Section 723.079(10), F.S.

(b) A developer shall file, prior to offering, either pursuant to a reservation agreement or contract for purchase, proof of the developer’s ownership, contractual, or leasehold interest in the land upon which the cooperative is to be developed. For purposes of this Rule, the division shall accept a signed written statement from the developer or the developer’s attorney describing the developer’s interest in the land upon which the cooperative is to be developed. The signature of the developer or the developer’s attorney constitutes a certificate that they have read the statement and, to the best of their knowledge, information, and belief formed after reasonable inquiry, the statement accurately describes the developer’s interest in the land.

(3) Upon receipt of a developer’s filing, the division will review the filing pursuant to these Rules. When a filing is determined to be in correct form pursuant to Rule 61B-79.002, F.A.C., offerings to the public may be made pursuant to the statute and these Rules. Until the developer prepares and delivers to a purchaser and to the division documents that comply with the Cooperative Act and these Rules and the division notifies the developer that the filing is proper or is presumed proper pursuant to Rule 61B-79.002, F.A.C., the developer shall not close on any contract for sale or contract for a lease period of more than five years.

(4) Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-33-037, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET FOR COOPERATIVE ASSOCIATIONS, incorporated herein by reference and effective 1/98. (This form, as well as all forms referenced in these Rules, may be obtained by writing the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.) The answers to the questions may be summary in nature, in which case the answers shall refer to identified portions of the cooperative documents.

(5) Any document required to be delivered to a prospective buyer or lessee pursuant to Section 719.503 or 719.504, F.S., which describes the developer’s (or other person’s) right to retain control of the association shall recite the provisions of Sections 719.301(1)(a)-(e), F.S., regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the document for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in Section 719.301, F.S.

(6) (a) Upon recording the cooperative documents as defined in Section 719.1035(1), F.S., or recording amendments adding phases as defined in Section 719.403(7), F.S., the developer or the association shall file the incorporation and recording information with the division within 30 working days on [DBPR Form CP 6000-2](http://www.myfloridalicense.com/dbpr/lsc/documents/DBPRFormCO6000-2eff1016132.pdf), NOTICE OF COOPERATIVE INCORPORATION/RECORDING INFORMATION, incorporated in this rule and effective 6-10-07. Any person may request a copy of the form, as well as all forms referenced in these rules, by sending a written request to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030.).

(b) 1. If the developer or the association has not already filed and the division has not reviewed and approved the recorded documents under subsections (2) and (3) of this rule and Sections 719.502, 719.503, and 719.504, F.S., prior to recording, then the developer or association shall submit a complete copy of the recorded documents with [DBPR Form CP 6000-2, NOTICE OF COOPERATIVE INCORPORATION/RECORDING INFORMATION](http://www.myfloridalicense.com/dbpr/lsc/documents/DBPRFormCO6000-2eff1016132.pdf); or

2. If the division has already reviewed and approved the recorded documents, then the developer or the association shall only file the form.

## 61B-79.002 Procedure for Filing and Examination of Documents.

(1) Filing.

(a) Documents submitted to the division for filing shall be securely bound and fastened between firm covers. Documents which are too bulky for binding may be submitted with the filing unbound.

(b) Each filing shall contain in the forepart a Table of Contents which lists the documents in the filing, in the order in which they appear.

(c) Each document shall be tabbed and labeled on the right side. Each label shall identify the document by appropriate word, phrase or abbreviation.

(d) Each filing shall be submitted in an expandable file folder approximately 14 3/4'' by 9 1/2'' in size. Filing Statements and the Filing Checklist referenced in this Rule shall be submitted with the documents and need not be submitted to purchasers.

(e) There shall be submitted with each filing a Filing Checklist which substantially conforms to [DBPR Form CO 6000-33-029, FILING CHECKLIST](http://www.myfloridalicense.com/dbpr/lsc/documents/CO6000-33-029CoopFilingChecklist.pdf), incorporated herein by reference and effective 1/98.

(f) A developer who contracts to sell a cooperative parcel when the construction, furnishing and landscaping of the cooperative property submitted to cooperative ownership have not been substantially completed or renovation of property converted to cooperative ownership has not been substantially completed in accordance with the plans, specifications or representations made by the developer, shall file with the division a copy of a fully executed escrow agreement for contract deposits pursuant to Section 719.202, Florida Statutes. An escrow agreement is deemed to be fully executed by the inclusion of the dates of execution and the appropriate signatures. An escrow agreement is the agreement between the developer and the escrow agent establishing the escrow account.

(2) Examination.

(a) Upon receipt of a filing, the division will determine whether the filing is in correct form. The filing is considered to be in correct form when:

1. All forms and documents, properly completed, tabbed, labeled and assembled in accordance with these Rules, are included;

2. The [DEVELOPER/COOPERATIVE FILING STATEMENT, DBPR Form CO 6000-33-024](http://www.myfloridalicense.com/dbpr/lsc/documents/33-024.frmCooperativefilingStatement.pdf), incorporated herein by reference and effective 1/98, has been completed properly; and

3. The correct filing fee has been received by the division, pursuant to Section 719.502(3), F.S.

(b) When the filing is found to be in correct form, the division will examine the content of the filing to determine its sufficiency under the Cooperative Act and these Rules. After receipt of the documents in correct form, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the filing is proper for filing purposes. Failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(c) The developer shall correct any form or content deficiencies noted by the division. The developer shall identify all new language and all deleted language, by providing a coded copy of the new documents identifying new language with underlining and striking through deleted material.

(d) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(e) In no event shall proper filing with the division be construed as approval of the offering by the division and no document or offering shall indicate that the division has in any manner approved the offering.

(3) Time periods for review and correction of filings.

(a) Reservation program filing. Within 20 days from receipt of the developer’s filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division’s notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(b) Cooperative filing. Within 45 days from receipt of the developer’s filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 45 days from the date of the division’s notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 30 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(c) Amendment filing. Within 35 days from receipt of the developer’s filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division’s notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(d) Notice of intended conversion filing. Within 20 days from receipt of the developer’s filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division’s notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(e) If the division fails to notify the developer within the time periods specified in this rule, the filing shall be considered proper for purposes of Section 719.502(1)(a), F.S., but shall not exempt the developer from compliance with all other provisions of the Cooperative Act or preclude any purchaser remedies afforded by the Act.

(f) If the developer does not correct deficiencies within the specified time period and does not timely request an extension of time, the division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) extensions in a particular filing. If a filing is rejected, the developer, when subject to the requirements of Section 719.202, F.S., shall, within 45 days of issuance of the final order of rejection, provide the division with a complete accounting of any deposits collected pursuant to the rejected documents. The developer shall also, immediately and in writing, notify all purchasers under contract of the rejection and shall offer immediate refund of deposits collected, as well as interest as appropriate, under the contracts. A complete refiling of the documents pursuant to the requirements of Chapter 719, F.S., and these rules, including the payment of filing fees, will be required prior to any additional offerings.

## 61B-79.003 Filing and Examination of Amendments to Documents.

(1) “Amendment” means any change to documents, whether technical or substantive, regardless of the procedure by which the change is made.

(2) (a) Every developer of a cooperative who holds a unit for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to the purchaser pursuant to Rule 61B-79.004, Florida Administrative Code, all amendments prior to closing, but in no event, later than 10 days after the amendment.

(b) Upon filing an amendment to documents or items which have been accepted by the division, the developer shall pay to the division a filing fee of $100 per filing. A developer may include within each filing, multiple amendments relating to a single cooperative in which case a filing fee of only $100 shall be charged. However, there shall be no charge for filing a Certificate of Incorporation.

(c) Payment of fees shall be by check or money order made payable to Division of Florida Condominiums, Timeshares and Mobile Homes.

(3) The developer shall submit with the amendments the following information on a separate cover sheet:

(a) Name and physical location of the cooperative to which amendments apply;

(b) Developer’s name and mailing address;

(c) Division Identification Number;

(d) Identification of document to which amendment applies;

(e) Book, page number and county where recorded, if applicable;

(f) A statement summarizing each amendment; and

(g) All new and deleted language shall be shown by providing a coded copy of the new documents identifying new language with underlining and striking through material to be deleted from the documents.

(4) The division may require that documents or items be revised to include amendments if said revision is deemed necessary by the division for full and adequate disclosure.

(5) Upon receipt of an amendment, the division will examine the material to determine its sufficiency under the Cooperative Act and these Rules. After receipt of the documents, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the amendment is proper for filing purposes. Failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(6) The developer shall correct the deficiencies noted by the division.

(7) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(8) In no event shall proper filing with the division be construed as approval of the amendment by the division. No documents or offering materials shall indicate the division has in any manner approved the materials.

## 61B-79.004 Contracts.

(1) In determining whether a developer has closed on a contract for sale or lease for purposes of this Rule, it shall be relevant although not dispositive, whether and the extent to which the developer delivered to the purchaser evidence of ownership in the association and a lease or other muniment of title or possession; or whether a lease has been executed by all parties.

(2) The developer shall not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by the signed Receipt for Documents unless the buyer is informed of the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his records proof of purchaser’s agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-79.003, Florida Administrative Code, the developer shall provide to those who have not closed a written statement that if any of the above-referenced amendments materially alter or modify the offering in a manner which is adverse to the purchaser, the purchaser or lessee shall have a 15-day voidability period.

(4) At the time of closing a sale or lease for a period of more than 5 years, the developer shall notify the purchaser or lessee in writing stating that the developer has provided the purchaser or lessee all amendments to items delivered to the purchaser or lessee pursuant to Chapter 719, Florida Statutes.

(5) After the buyer or lessee for a term of more than 5 years has received all of the items required by Chapter 719, Florida Statutes, and these Rules of the division as evidenced by the signed Receipt for Cooperative Documents, he may extend the time of closing for a period not to exceed 15 days if closing was scheduled less than 15 days after execution of contract and receipt of the documents.

(6) If a contract is properly terminated by the buyer or lessee, as described in this Rule, the developer shall refund to the proposed buyer or lessee any deposit made, together with any interest in accordance with Section 719.202, Florida Statutes.

(7) In the sale or lease of a unit which has been occupied by someone other than the buyer, a statement that the unit has been occupied must be included in the contract.

(8) If a contract is for the lease of a unit for a term of more than 5 years, the contract shall include as an exhibit a copy of the proposed lease.

(9) Only contracts conforming to the requirements of this Rule and the provisions of Section 719.503, Florida Statutes, may be utilized by a developer in connection with the offering and sale, or lease for a term of more than five years, of a unit pursuant to the requirements of Section 719.502, Florida Statutes. A contract shall not limit the purchaser’s remedy, for the developer’s willful non-performance under the contract, to a return of the purchaser’s deposit or a return of the purchaser’s deposit plus interest.

(10) Every developer who enters into a contract for the sale of a residential cooperative unit or for the lease of a residential cooperative unit for a lease period of more than five years shall obtain from the purchaser or lessee a receipt acknowledging that he has been provided the required documents by the developer. The developer shall itemize all items which are applicable and are to be delivered to the purchaser. Those items to be delivered shall be those documents required by the Division for filing during the examination period, pursuant to Sections 719.503 and 719.504, Florida Statutes. A copy of the receipt form shall be submitted to the Division at the time of filing. The developer shall provide the purchaser or lessee with a copy of the signed receipt, upon request. The developer shall retain a copy of the signed receipt for a period of five years after the date of closing of the transaction, maintained in the official business records of the developer. Said receipt shall include but does not have to be limited to the items listed below in paragraphs (a)-(c):

(a) The name and address of the cooperative.

(b) An acknowledgment signed by the purchaser or lessee which lists the documents which have been received by the purchaser or lessee, or as to plan and specifications, made available for inspection.

(c) The following statement:

THE PURCHASE AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER’S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THE PURCHASE AGREEMENT BY THE BUYER AND RECEIPT BY THE BUYER OF ALL OF THE DOCUMENTS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER. THE AGREEMENT IS ALSO VOIDABLE BY THE BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER’S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE DOCUMENTS REQUIRED. BUYER’S RIGHT TO VOID THE PURCHASE AGREEMENT SHALL TERMINATE AT CLOSING.

## 61B-79.005 Plot and Floor Plans.

(1) Every plot plan shall be a legible, scaled drafted map and shall indicate the following:

(a) Name of the cooperative;

(b) Scale, date and north arrow;

(c) Ingress and egress;

(d) The use and approximate size, location, and height of all existing and/or proposed buildings and other structures;

(e) Common areas;

(f) Limited common areas;

(g) Easements;

(h) Parking areas;

(i) The party who prepared the map.

(2) Each item depicted on the plot plan shall be identified as existing or proposed.

(3) Every filing shall include, if applicable, a floor plan for each type of unit. For the purposes of disclosure provided to purchasers and filed with the division pursuant to Sections 719.502, 719.503 and 719.504, Florida Statutes, the floor plan shall be legible, and shall, at a minimum, show:

(a) The perimeter boundaries of the unit and the approximate dimensions of such boundaries.

(b) The walls separating each room within the unit and the approximate dimensions of each room.

(c) The approximate location of all doorways.

(d) The dimension requirements of this Rule may be achieved with a plan drawn to scale with the scale depicted on the plan.

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## 61B-80.101 Scope, Organization, Procedure, Forms, and Title.

(1) This chapter shall be entitled “The Arbitration Rules of Procedure Governing Recall and Election Disputes in Homeowners’ Associations” and shall govern the arbitration of election disputes and recall disputes arising in a homeowners’ associations governed by Chapter 720, F.S. For purposes of these rules “homeowners” means “members” and “parcel owners” who are voting members of the association as those terms are defined by Section 720.301, F.S. This chapter applies to all recall and election arbitration proceedings held pursuant to Section 720.303, 720.306, or 720.311, F.S.; these provisions shall only apply to election and recall disputes that exist on or after October 1, 2004. The provisions of Chapters 61B-45 and 61B-50, F.A.C., are incorporated herein by reference to the extent those chapters are consistent with these rules. These rules also apply to all arbitration proceedings referred to the division and conducted after mediation pursuant to Section 720.311(2)(b), F.S.

(2) All petitions and other papers filed with the division for election or recall arbitration pursuant to Section 720.303, 720.306, or 720.311, F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-1030, except that a petition or other pleading may be filed with the division via telefax at (850) 921-5446. All forms referenced in these rules may be obtained online at: http://www.myflorida.com/dbpr/.

(3) In order to file a petition for recall arbitration, a petitioner must use [DBPR FORM HOA 6000-4, MANDATORY BINDING ARBITRATION FORM PETITION–RECALL DISPUTE](http://www.myfloridalicense.com/dbpr/lsc/ARB/Petition-RecallDispute.pdf), incorporated herein by reference and effective 2-3-05. In order to file a petition for election arbitration, a petitioner must use [DBPR FORM HOA 6000-3, MANDATORY BINDING ARBITRATION FORM PETITION–ELECTION DISPUTE](http://www.myfloridalicense.com/dbpr/lsc/ARB/Petition-ElectionDispute.pdf), incorporated by reference and effective 2-3-05. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed [DBPR FORM HOA 6000-6, HOA QUALIFIED REPRESENTATIVE APPLICATION](file:///C:\Users\Suzanne%20Gray\AppData\Roaming\Microsoft\Word\Qualified%20Representative%20Application%20-%20DBPR%20Form%20HOA%206000-6), incorporated herein by reference and effective 2-3-05. An answer to a petition for arbitration for recall or election dispute arbitration must be filed using [DBPR FORM HOA 6000-9, HOA ANSWER TO PETITION](http://www.myfloridalicense.com/dbpr/lsc/ARB/AnswertoPetition_000.pdf), incorporated herein by reference and effective 2-3-05. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on [[2]](#footnote-2)DBPR FORM HOA 6000-7, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 2-3-05.

## 61B-80.102 Filing for Recall Dispute Arbitration.

(1) Where the homeowners attempt to recall one or more directors of a board of a homeowners’ association by written agreement, ballot, or vote taken at a meeting, the board of directors shall initiate a recall arbitration by filing a petition for recall arbitration with the division as provided by this rule. Where the homeowners attempt to recall one or more directors of a board at a homeowners meeting or by an agreement in writing or written ballot, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall. Where the board fails to file a petition for recall arbitration as required by these rules and Chapter 720, F.S., the homeowners seeking to challenge the board’s decision not to certify the recall, or not to file for recall arbitration, may file a petition for arbitration pursuant to these rules.

(2) Form of Petition. The term “petition” as used in this rule includes any application or other document that expresses a request for arbitration of a recall of one or more board directors. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced. A party filing a petition for recall arbitration shall utilize [DBPR FORM HOA 6000-4, MANDATORY BINDING ARBITRATION FORM PETITION–RECALL DISPUTE](http://www.myfloridalicense.com/dbpr/lsc/ARB/Petition-RecallDispute.pdf) and shall submit the $200 filing fee with the petition.

(3) All petitions for arbitration of a recall filed by an association or by the homeowners who voted in favor of recall shall be signed by either a member of the Florida Bar, or by a qualified representative who has submitted an application to appear pursuant to Rule 61B-80.101, F.A.C. Each petition shall contain:

(a) The name and address of the association, the number of total voting interests in the association, the number of voting interests voting for recall of each board member sought to be recalled, the number of recall votes rejected by the board as to each candidate subject to the recall, and the total number of seats on the board at the time that the recall is served on the board;

(b) The name or names of the board director or directors who were recalled;

(c) The name and address of the homeowner representative selected, pursuant to subparagraph 61B-81.002(2)(b)3. or paragraph 61B-81.003(1)(f), F.A.C., to receive pleadings, notices, or other papers on behalf of the recalling homeowners;

(d) A statement of whether the recall was by vote at a meeting of the homeowners or by written agreement.

(e) If the recall was by vote at a meeting, the petition shall state the date of the meeting of the homeowners and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

(f) The date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order and adjourned;

(g) A copy of the minutes of the board meeting at which the board determined not to certify the recall;

(h) Each specific basis upon which the board based its determination not to certify the recall, including the parcel number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board director may be recalled with or without cause. The fact that a homeowner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

(i) Any relevant sections of the bylaws, articles of incorporation, the declaration of covenants, and rules, including all amendments thereto, as well as any or other documents that are pertinent to the petition; and

(j) Any other information that the petitioner contends is material.

(4) If, during the pendency of a recall arbitration, the homeowners attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

(5) Upon receipt and review of a petition for arbitration of a recall of one or more board directors, the division shall review the petition to verify that it contains all required information and that the petition states a valid claim for relief. If the petition is accepted, within 10 days of the filing of the petition, the arbitrator shall serve the respondent homeowners or other named respondents by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling homeowners identified in the petition or other named respondent.

(6) As provided by Subsection 720.303(10), F.S., the board of directors must hold a board meeting within 5 full business days after its receipt of a recall agreement in writing or the written recall ballots, and further, the board must within 5 full business days of the board meeting, file a petition for recall arbitration if the board determines not to accept the recall of one or more board directors. The time periods contained in Subsection 720.303(10), F.S., operate in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the calling and holding of a meeting on whether to certify a recall, or fails to comply with these rules relating to the filing of a petition for recall arbitration, the board must provide justification and must demonstrate that its actions or inactions were taken or based in good faith. The board’s claims of excusable neglect or the inability to identify defects in the recall effort within the time provided will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapter 720, F.S., will result in the certification of the recall and the immediate removal of the board directors subject to recall; however, the failure of the association to timely call or hold a board meeting or to file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of these rules.

## 61B-80.103 Filing for Election Dispute Arbitration.

(1) An election arbitration is commenced upon the filing of a petition for mandatory binding arbitration pursuant to Sections 720.306 and 720.311, F.S., and conforming to the requirements of this rule. The term “petition” as used in this rule includes any application or other document that expresses a request for arbitration of an election dispute. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced. A party filing a petition for election arbitration shall utilize DBPR FORM HOA 6000-3, MANDATORY BINDING ARBITRATION FORM PETITION–ELECTION DISPUTE and shall include a $200 filing fee, incorporated in subsection 61B-80.101(3), F.A.C.

(2) Election disputes include a controversy relating to the conduct of a regular, special, or runoff election; the qualification of candidates for the board; the filling of a vacancy caused by any reason other than the recall of one or more directors of the board; and other disputes regarding an association election.

## 61B-80.104 Expedited Procedure for Determination of Jurisdiction.

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a request for expedited determination of jurisdiction by filing a completed DBPR FORM HOA 6000-7, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated in subsection 61B-80.101(3), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by a completed DBPR FORM HOA 6000-3, MANDATORY NON-BINDING ARBITRATION PETITION FORM, incorporated in subsection 61B-80.101(3), F.A.C., which shall include the $200.00 filing fee provided by Section 720.311, F.S.

(2) If the determination of jurisdiction is subject to reasonable dispute, within 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by United States mail to all other persons involved with the dispute, a copy of the request for expedited determination of jurisdiction, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

## 61B-80.105 Computation of Time.

(1) Recall Time Calculation. In computing the five full business days prescribed by subsections 720.303(10)(b)2., 720.303(10)(c)2., and 720.303(10)(d), F.S., and these rules, in which the board is required to duly notice and hold a board meeting and file for recall arbitration with the division, the day that the board is served with notice of the recall and the day of the board meeting shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day. For example, if a recall petition is served on the board on June 1, 2004, a Tuesday, the board must duly notice and hold a board meeting to determine whether to contest the recall not later than Monday, June 7, 2004. Likewise, if the board meeting on whether to certify the recall is held on Monday, June 7, 2004, the board shall file its petition for recall arbitration not later than the close of business on Monday, June 14, 2004.

(2) Additional Time after Service by Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of an order or pleading upon that party, and the order or pleading is served by regular United States mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. This provision does not apply to the filing of the petition for recall arbitration which must be filed by the board within 5 business days of the board meeting on whether to certify the recall. In addition, no additional time is added by operation of this rule for a motion for rehearing that must be filed (e.g., received) by the division within 15 days of entry of a final order. No additional time is added by operation of this rule for the filing of a motion for costs and attorney fees that must be filed (e.g., received) by the division within 30 days of entry of a final order or final order on motion for rehearing.

## 61B-80.106 Parties; Appearances; Substitution and Withdrawal of Counsel.

(1) Parties in any proceeding conducted in accordance with Section 720.303, 720.306, or 720.311, F.S., are petitioners or respondents.

(2) The petitioner in a recall arbitration proceeding may be the association, where the board seeks to challenge a recall effort of the homeowners, or may be the homeowners voting in favor of recall where the association fails to timely file a petition for recall arbitration. Where the association through the board timely files for recall arbitration, the respondents shall be the group of homeowners who voted at a meeting, or who executed a written agreement, to recall one or more directors of the board. Every homeowner who voted in favor of recall and who did not revoke his or her vote prior to service on the board of the recall agreements shall be deemed to be a party in the recall arbitration proceeding. Where the homeowners voting in favor of recall file the petition for recall arbitration, the respondent shall be the association.

(3) Parties in an election dispute shall be involved homeowners and the association.

(4) All parties shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-80.108, F.A.C.

(5) An attorney or qualified representative who has filed a petition or has otherwise become the attorney or representative of record for a party to a proceeding shall be permitted to withdraw from representation only upon the filing of a suitable motion with the arbitrator, which motion shall provide a correct mailing address for the client. Only attorneys licensed to practice law in Florida shall be permitted to appear as counsel of record, except that an attorney licensed out of state may apply to the arbitrator for permission to appear in an individual proceeding.

## 61B-80.107 Who May Appear; Criteria for Other Qualified Representatives.

(1) Any person who appears before any arbitrator has the right, at that person’s own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of these rules of procedure, and with any relevant portions of Chapter 720, F.S., and the rules promulgated by the division.

(2) If a person wishes to be represented by a qualified representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative’s sworn affidavit setting forth the representative’s qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the homeowner’s interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration.

(4) A representative named in the initial petition or who has filed a notice of appearance shall remain the representative of record and shall receive pleadings and continue in a representative capacity until the representative’s withdrawal has been approved in writing by the arbitrator.

(5) Any successor or associated attorney or other non-attorney representative shall file a notice of appearance prior to, or at the time of, the filing of any pleading with, or appearance before, the arbitrator.

(6) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading. All motions or pleadings shall be filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative’s knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secrete himself or herself for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’s testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

## 61B-80.108 Communication with an Arbitrator.

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation concerning the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding. No party or other interested person shall attempt to telephone or otherwise contact the arbitrator unless all parties are joined in the telephone call or otherwise included in the communication.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

## 61B-80.109 Withdrawal or Dismissal of Petition; Settlement.

(1) A petitioner may withdraw or dismiss the petition in writing at any time prior to the entry of a final order. Such withdrawal or dismissal shall be without prejudice to re-filing the petition at a later date. Upon the filing of a dismissal or withdrawal, the arbitrator shall enter an order closing the case file. The filing of a dismissal or withdrawal shall not preclude an award of prevailing party costs and attorney fees. Where a petitioner voluntarily dismisses the petition, such dismissal shall not relieve the petitioner of the requirement of mandatory binding arbitration for resolution of the dispute; the dispute shall not be filed in the courts but may be re-filed for binding arbitration at a later date.

(2) The petitioner or the parties may request dismissal of the case based on settlement of the dispute. The settlement of a dispute shall not preclude a later award of prevailing party costs and attorney fees.

(3) Withdrawal of a petition for arbitration of a recall shall be with prejudice; that is, the recall petition can never be re-filed with reference to that recall effort. If the board withdraws the petition, unless otherwise provided in the final order, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

(4) Where a respondent undertakes corrective action that ends the dispute between the parties, the respondent shall immediately so notify the arbitrator.

## 61B-80.110 Filing; Service of Papers; Signing.

(1) Filing. Unless specifically ordered by the arbitrator or provided for by these rules, every pleading or other paper filed in the proceedings, except an initial petition for arbitration, shall also be served on each party.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person’s last known address.

(b) In a recall arbitration proceeding, when the homeowners have not designated a homeowner representative to represent their interests or when the homeowner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration, the order allowing answer, or other pleading or order on the association property in the same location as it posts notices of meetings in accordance with Section 720.303(2)(c)1., F.S.

(c) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

“I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by United States (U.S.) mail this \_\_\_ day of \_\_\_ , 20\_\_ .”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall or election arbitration shall be accompanied by one (1) copy for the respondents.

(4) “Filing” shall mean actual receipt by the division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved:

(b) The case number, if any;

(c) The name of the party on whose behalf the pleading or motion is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by paragraph (2)(c) of this rule.

## 61B-80.111 Answer and Defenses.

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a respondent in an election dispute shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. In a recall dispute, the respondent shall have 10 days in which to file an answer. The answer shall include all defenses and objections, and shall be filed on DBPR FORM HOA 6000-9, ANSWER TO PETITION, incorporated in Rule 61B-80.101, F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in subsection 61B-80.101(3), F.A.C.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition in an election dispute postpones the time for filing of the answer until 20 days after the arbitrator’s ruling on the motion. The following defenses shall be made by motion in opposition to the petition:

(a) Lack of jurisdiction over the subject matter,

(b) Lack of jurisdiction over the person,

(c) Insufficiency of process,

(d) Insufficiency of service of process,

(e) Failure to state a cause of action, and

(f) Failure to join indispensable parties.

In the case of election arbitration proceedings, a motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time. In a recall proceeding, these enumerated defenses shall not be raised by motion but shall be included in the answer.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based.

## 61B-80.112 Defaults and Final Orders on Default.

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) Final orders on default may be entered at any time after the entry of a default. The arbitrator shall require affidavits as necessary to determine damages. The arbitrator may, within a reasonable time following entry of the final order on default, not to exceed one year, set aside a final order on default for reasons of excusable neglect, mistake, surprise, or inadvertence.

## 61B-80.113 Motions; Motions for Temporary Injunctive Relief.

(1) During the course of a pending arbitration proceeding, a request to the arbitrator for an order granting some relief or request shall be made by written motion, unless made during a hearing. The motion shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 days of service of a written motion or other time as provided by the arbitrator, file a written response in opposition to the motion.

(2) A party may, either with the original petition for arbitration, or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

## 61B-80.114 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.

(1) Any dispute that does not involve a disputed issue of material fact shall be arbitrated as provided in this rule. Where there are no disputed issues of material fact, no formal evidentiary hearing shall be conducted. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(2) At any time after the filing of the petition, if the parties do not dispute the important facts in a case, the arbitrator shall summarily enter a final order denying relief requested in the petition if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the petition, if the parties do not dispute the important facts, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.

(4) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

## 61B-80.115 Discovery.

(1) The discovery process shall be used sparingly and only for the discovery of those things that are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Where discovery is permitted by order of the arbitrator, the parties may obtain discovery through the means and in the manner provided in rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a homeowner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner’s right of access to the official records as provided by Section 720.303, F.S., in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties or either party to submit supplemental information, evidence or affidavits in support of, supplementing, explaining, or refuting any legal or factual assertion contained in a petition, answer, affirmative defense, or motion or other pleading.

## 61B-80.116 Conduct of Proceeding by Arbitrator.

(1) The failure or refusal of a respondent to comply with a provision of these rules or any lawful order of the arbitrator shall result in the striking of the answer including any defenses or pending claims where such failure is deemed willful, intentional, or a result of neglect.

(2) The failure or refusal of a petitioner to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect.

(3) In order to expedite the case, the arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing or final hearing, by telephone conference.

(4) At any time after a petition for arbitration has been filed with the division, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

## 61B-80.1165 Non-Final Orders.

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is placed in abeyance or abated by a non-final order, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

## 61B-80.117 Subpoenas and Witnesses; Fees.

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in rule 1.410, Florida Rules of Civil Procedure, or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, F.S., or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

## 61B-80.118 Stenographic Record and Transcript.

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all the costs of obtaining such a record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party’s own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

## 61B-80.119 Conduct of Formal Hearing; Evidence.

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross-examine the other party’s witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, the respondent may present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any relevant evidence if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but is not sufficient to support a finding, unless the hearsay evidence would be admissible in a court of law. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence.

(b) All exhibits shall be identified as petitioner’s exhibits, respondent’s exhibits, or as joint exhibits. The exhibits shall be marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

## 61B-80.120 Notice of Final Hearing; Scheduling; Venue; Continuances.

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator.

(3) In the arbitrator’s discretion, a duly scheduled hearing may be delayed or continued for good cause shown. Requests for a continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

## 61B-80.121 Final Orders and Appeals.

(1) Unless waived, a final order shall be entered within 30 days after any final hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service that shall show the date of mailing of the final order to the parties.

(3) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(4) A final order or nonfinal order is effective upon its issuance and mailing unless otherwise provided in the order or unless a stay of the order has been applied for and granted by the arbitrator. A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

(5) The final order of the arbitrator is binding on the parties and may not be appealed. The final order of the arbitrator does not constitute final agency action and is not appealable to the district courts of appeal in the manner provided by Section 120.68, F.S. In any subsequent judicial proceeding, for example, where a party sues in court to enforce the final order, the department, the division, and the arbitrator are not necessary or proper parties and shall not be named as parties.

(6) The arbitrator in the final order may grant mandatory or prohibitory relief, declaratory relief, or any other remedy or relief that is just and equitable. No final order shall include a civil penalty assessed against a party. Relief may include certification of an election or recall, decertification of an election or recall, a requirement that a new election be held, certification of a candidate for election, decertification of a candidate, requiring a board to fill a vacancy or hold an election to fill a vacancy, requiring a director to return association records to the board, and cease acting as a board member, or other relief as may be appropriate in a given case.

## 61B-80.122 Technical Corrections; Rehearing.

(1) Any party may file a motion for rehearing or a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 15 days of the date on which the order was entered. “Clerical corrections” shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. A motion for rehearing shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended but shall not re-argue the merits of the final order. Any response shall be filed within 10 days of service of the motion.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by subsection (1) above within 60 days of the entry of the final order. A timely filed motion for rehearing tolls the time in which a party must file to recover its costs and attorney fees, until after disposition of the motion for rehearing or reconsideration.

## 61B-80.123 Motions for Attorney fees and Costs.

(1) The prevailing party in a proceeding brought pursuant to Section 720.311, F.S., is entitled to an award of reasonable costs and attorney fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition.

(2) Any party seeking an award of costs and attorney fees must request the award in writing prior to the rendition of the final order, failing which no motion for costs and attorney fees will be granted.

(3) A party prevailing in an arbitration proceeding must file a motion requesting an award of costs and attorney fees within 30 days following entry of a final order, or final order on rehearing entered in response to a timely filed motion for rehearing. The motion is considered filed when it is actually received by the division.

(4) The motion must specify the hourly rate claimed and must include an affidavit of the attorney who performed the work that states the number of years the attorney has practiced law, must indicate each activity for which compensation is sought, and must state the time spent on each activity. In a case involving multiple issues or counts, the affidavit shall present time activity broken down by issue or count.

(5) If an award of costs is sought, the party seeking recovery of costs shall attach receipts or other documentation to provide evidence of the costs incurred. Costs will be awarded consistent with Florida case law and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

## [61B-80.124](https://www.flrules.org/gateway/ruleNo.asp?id=61B-80.124" \t "ruleNo) Department Fee.

(1) The department fee will be an amount adequate to cover all costs and expenses incurred by the department in conducting an arbitration proceeding pursuant to Section 720.311, F.S.

(2) The fee shall be the sum of the following costs:

(a) The sum of the “Labor Cost” for all employees who perform work on the case. The “Labor Cost” for an employee shall be calculated as follows: [(P x 1.35)/W] x H. Where P = the biweekly pay of the lowest pay grade for the employee’s position title; 1.35 is a multiplier that takes into account the cost of pay and benefits for an employee; W = the biweekly contract hours for the employee; and H = hours directly related to the arbitration proceeding worked by the employee.

(b) The cost a contractor charges the department for any work directly related to the arbitration proceeding.

(c) Other proceeding costs directly related to the proceeding. For example direct costs include, but are not limited to, travel, long distance charges and photocopy expenses.

(3) If the arbitration proceeding involves an election dispute, petitioner and respondent shall be charged an equal share of the department’s fee. Where the arbitration dispute involves a recall dispute, only the association shall be charged the department’s fee.

(4) The department will send the party or parties an invoice for the department’s fee. The petitioner and respondent shall pay the fee within thirty days of the date of the invoice. The department’s acceptance of less than full payment by a party shall not be considered a waiver of its right to the full amount of the fee. The department’s acceptance of the payment by one party does not relieve the other party or parties from payment of their share of the fee.

(5) The department shall have the right to collect any unpaid fee to the fullest extent permitted by the laws of this state.

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# SUBSTANTIVE RULES FOR RECALLS IN HOMEOWNERS’ ASSOCIATIONS

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## 61B-81.001 Right to Recall and Replace a Board Director; Developers; Other Members; Class Voting.

(1) For purposes of these rules, “homeowner” is the “member” or “parcel owner” who has the “voting interest” as those terms are defined by Section 720.301, F.S.

(2) Developer Representatives. When both a developer and other homeowners are entitled to representation on a board of directors pursuant to Section 720.307, F.S., the following provisions apply to recall and replacement of directors elected or appointed by a developer:

(a) Only parcels owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a director who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a director who was elected or appointed by a developer is a majority of the total parcels owned by that developer.

(c) A director who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote to fill a vacancy on the board previously occupied by a director elected or appointed by that developer.

(3) Homeowner Representatives. When both a developer and other homeowners are entitled to representation on a board of administration pursuant to Section 720.307, F.S., the following provisions apply to recall and replacement of directors elected or appointed by homeowners other than a developer:

(a) Only parcels owned by homeowners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a director elected by homeowners other than a developer.

(b) The percentage of voting interests required to recall a director elected by homeowners other than a developer is a majority of the total parcels owned by homeowners other than a developer.

(c) A director who is elected by homeowners other than a developer may be recalled only by homeowners other than a developer.

(d) Only homeowners other than a developer may vote to fill a vacancy on the board previously occupied by a director elected by homeowners other than a developer.

(4) Class Voting. When the governing documents provide that a specific class of homeowners is entitled to elect a director or directors to the board, the class of homeowners electing such director or directors to the board shall constitute all the voting interests that may recall or remove such director or directors.

## 61B-81.002 Recall of One or More Directors of a Board at a Homeowner Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. If the governing documents specifically allow recall at a homeowners’ meeting, 10 percent of the voting interests may call a meeting of the homeowners to recall one or more directors of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a homeowners’ meeting to recall one or more directors of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a meeting of the homeowners to recall one or more directors of the board;

2. State that replacement directors shall be elected at the meeting if a majority or more of the existing directors are successfully recalled at the meeting; and

3. Contain lines for the voting interest to fill in his or her parcel number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the members’ meeting is to recall one or more directors of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled directors will be conducted at the meeting;

2. List by name each director sought to be recalled at the meeting, even if all directors are sought to be recalled;

3. Specify a person, other than a director subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement directors as there are directors sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining directors may appoint replacements. In addition, the notice must state that nominations for replacement directors may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all homeowners as required in the governing documents for a meeting of the homeowners; and

7. Be delivered to the board at least 10 days prior to the recall meeting. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. A recall meeting shall be held not less than 10 days nor more than 20 days from the date when the notice of the recall meeting is mailed or delivered.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling homeowners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board director subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative’s name and address;

3. Record the vote count taken on each director of the board sought to be recalled;

4. State whether the recall was effective as to each director sought to be recalled;

5. Record the vote count taken on each candidate to replace the board directors subject to recall and, if applicable, the specific seat each replacement board director was elected to, in those cases where a majority or more of the existing board was subject to recall; and

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board director separately.

(e) Filling Vacancies. When the voting interests have recalled one or more board directors at a homeowners’ meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board directors shall be conducted at the homeowners’ meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 720.307, F.S., by the affirmative vote of the remaining board directors. In the alternative, if less than a majority of the existing board is recalled at the homeowners meeting, the board may call and conduct an election to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote to elect replacement board directors in an amount equal to the number of recalled directors.

(f) Taking Office. When a majority or more of the board is recalled at a homeowners’ meeting, replacement directors shall take office:

1. Upon the expiration of five full business days after adjournment of the homeowners’ recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the homeowners’ recall meeting; or

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

3. Upon certification of the recall by the board; or

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual homeowner’s vote or any additional homeowners’ votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of one or more directors of the board.

(5) Board Meeting Concerning a Recall at a Meeting of the Homeowners; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more directors at a homeowners’ meeting. It shall be presumed that recall of one or more directors at a homeowners’ meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more directors by vote at a homeowners’ meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 720.307, F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 720.306(9), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes for any reason not to certify the recall of one or more directors at a meeting of the homeowners, the following provisions apply:

1. The board shall, subject to the provisions of these rules file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more directors.

2. Any director sought to be recalled shall, unless he or she resigns, continues to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement directors elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement directors elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Failure to Duly Notice and Hold the Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the homeowners’ recall meeting, the following shall apply:

(a) The recall under these circumstances shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the homeowners’ recall meeting.

(b) If a majority of the board is recalled, replacement directors elected at the homeowners’ meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the homeowners’ recall meeting, in the manner specified in this rule.

## 61B-81.003 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors shall:

(a) List by name each director sought to be recalled;

(b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement directors as there are directors subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are directors sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a director or directors;

(d) Provide a space for the person signing the written agreement to state his or her name, identify his parcel by number or street address and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he or she is authorized in the manner required by the governing documents to cast the vote for that parcel;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board director or the association’s registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a director, the association’s registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, F.S., and the procedures for service of subpoenas as set out in rule 1.410(c), Florida Rules of Civil Procedure, effective 2-3-05; and

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. A written recall ballot expires 120 days after it is signed by a homeowner. Written recall ballots become void with respect to the director sought to be recalled where that director is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited or general proxy given by the homeowner(s) of record.

(k) Any rescission or revocation of a homeowner’s written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a director or directors.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more directors shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining directors, subject to the provisions of Section 720.307, F.S., relating to developer control of the association and regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 720.306(9), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, consistent with the provisions of Chapter 61B-80, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement directors elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and homeowner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents;

(b) The failure of the association to enforce a voting certificate requirement in past association elections and homeowner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement;

(c) The date and time the board meeting is called to order and adjourned;

(d) Whether the recall is certified by the board;

(e) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and

(f) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual homeowner vote or any additional homeowner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking Office. When a majority or more of the board is recalled by written agreement, replacement directors shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement;

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration;

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed under these circumstances effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement directors elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled director shall immediately return to the replacement board all association records in his or her possession. If less than the entire board is recalled, each recalled director shall immediately return to the board all association records in his or her possession.

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# Community Association Manager’s Regulatory Council

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## 61E14-1.001 Prelicensure Education Requirements

(1) All community association manager applicants must satisfactorily complete a minimum of 18 in-person classroom hours of instruction of 50 minutes each within 12 months prior to the date of examination. No applicant shall be allowed to take the licensure examination unless the applicant provides documentation of completion of the requisite prelicensure education. Each contact hour shall consist of at least 50 minutes of classroom instruction

(2) The 18 hours of prelicensure education shall be comprised of courses in the following areas:

(a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations - 20%

(b) Procedure for noticing and conducting community association meetings - 25%

(c) Preparation of Community Association Budgets and Community Association Finances – 25%

(d) Insurance matters relating to Community Associations – 12%; and

(e) Management and maintenance – 18%

(3) Applicants who can document to the Council that they suffer from a disability or hardship shall be permitted to complete prelicensure education by either correspondence or on-line courses. Such documentation must be received and approved by the Council prior to enrolling and completing any correspondence or on-line prelicensure courses.

(a) The following shall constitute acceptable “hardships” as used in this rule:

1 The applicant’s residence is more than 70 miles from the nearest physical location where prelicensure education is taught.

2. Providers are not offering any in-person prelicensure education courses within the twelve months preceding the next available examination.

(b) “Disability” as used in this rule shall mean a physical or mental impairment that substantially limits one or more of the major life activities of the applicant which would preclude the applicant from attending in-person prelicensure courses.

## 61E14-1.002 Examination for Manager's License.

(1) An examination candidate must achieve a scaled score of 75 or higher in order to achieve a passing grade on the examination.

(2) The examination for a community association manager's license as approved by the Council must test the applicant's knowledge of the subjects in subsection 61E14-1.001(2), F.A.C., with the corresponding approximate percentages of questions to the examination as a whole.

## 61E14-1.003 Reexamination.

If an examination candidate fails to achieve a passing grade on the examination, the candidate may re-apply in writing for reexamination with the (appropriate fees) fees provided in Rule 61E14-3.001, F. A. C. An examination candidate may only apply for reexamination within one year from the date of certification of the original application for a community association manager's license by the Department.

## 61E14-1.004 Examination Review. REPEALED 9-8-16

## 61E14-2.001 Standards of Professional Conduct.

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services.

(1) Definitions. As used in this rule, the following definitions apply:

(a) “Licensee” means a person licensed pursuant to Sections 468.432(1) and (2), F.S.

(b) “Community Association Management Services” means performing any of the practices requiring specialized knowledge, judgment, and management skill as defined in Section 468.431(2), F.S.

(c) “Funds” as used in this rule includes money and negotiable instruments including checks, notes and securities.

(2) Professional Standards. During the performance of community association management services, a licensee shall do the following:

(a) Comply with the requirements of the governing documents by which a community association is created or operated.

(b) Only deposit or disburse funds received by the community association manager or management firm on behalf of the association for the specific purpose or purposes designated by the board of directors, community association management contract or the governing documents of the association.

(c) Perform all community association management services required by the licensee’s contract to professional standards and to the standards established by Section 468.4334(1), F.S.

(d) In the event of a potential conflict of interest, provide full disclosure to the association and obtain authorization or approval.

(e) Respond to, or refer to the appropriate responsible party, a Notice of Violation or any such similar notification from an agency seeking to impose a regulatory penalty upon the association within the time frame specified in the notification.

(3) Records. During the performance of community association management services pursuant to a contract with a community association, a licensee shall not:

(a) Withhold possession of the association’s official records, in violation of Sections 718.111(12), 719.104(2) or 720.303(5), F.S., or original books, records, accounts, funds, or other property of a community association when requested by the association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the association.

(b) Deny or delay access to association official records to an owner or his or her authorized representative who is entitled to access within the timeframe and under the procedures set out in Sections 718.111(12), 719.104(2) or 720.303(5), F.S.

(c) Create false records or alter the official records of an association in violation of Sections 718.111(12), 719.104(2) or 720.303(4), F.S., or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

(d) Fail to maintain the records for a community association manager or management firm or the official records of any applicable association, as required by Sections 718.111(12), 719.104(2) or 720. 303(4), F.S.

## 61E14-3.001 Fees.

The following fees are adopted by the Council:

(1) Application fee for a Community Association Manager’s License $50.00

(2) Fingerprint processing fee $47.00

(3) Examination fee:   
When the examination is not conducted by a professional testing service  
pursuant to Section 455.2171, F.S., $100.00   
payable to the Department.

When the examination is conducted by a professional testing service   
pursuant to Section 455.2171, F.S., $68.50   
payable to the Department plus $31.50  
payable to the testing service.

(4) Re-examination fee: When the examination is not conducted by a   
professional testing service pursuant to Section 455.2171, F.S., $100.00  
payable to the Department.

When the examination is conducted by a professional testing service   
pursuant to Section 455.2171, F.S., $68.50  
payable to the Department $31.50  
payable to the testing service.

(5) Examination review fee $50.00

(6) Initial license fee $100.00

(7) Renewal fees.

(a) The biennial renewal fee for a licensee renewing as active $100.00

(b) The biennial renewal fee for a licensee renewing as inactive $100.00

(8) Delinquent license fee. A delinquent status licensee shall pay a   
delinquent license fee when the licensee applies for active or  
inactive status $ 50.00

(9) Unlicensed activity fee for initial licensure and license renewal $ 5.00

(10) Reactivation fee for reactivating an inactive license $ 25.00

(11) Change of status processing fee. A licensee shall pay a change   
of status processing fee to change the licensee’s status at   
any time other than the beginning of a licensure period $ 15.00

(12) Duplicate license fee in event of loss or destruction $ 25.00

(13) Application fee for continuing education providers $250.00

(14) The renewal fee for continuing education providers $250.00

(15) Application fee for prelicensure education providers $250.00

(16) The renewal fee for prelicensure education providers $250.00

## 61E14-3.002 Special Assessment.

(1) Each Community Association Manager licensee licensed on or before January 1, 2002, whether active or inactive, shall pay a special assessment fee of $200.00 to the Department. Payment of the fee must be received by the Department no later than 5:00 P.M. on September 30, 2002. .

(2) The special assessment fee applies to all licensees including those whose licenses have been suspended and/or placed on probation by the Department.

(3) Failure to pay the special assessment fee as required above shall constitute grounds for disciplinary action. Licensees who fail to pay the special assessment fee as required above shall be charged with violating Section 468.436(1)(b)2., Florida Statutes.

## 61E14-4.001 Continuing Education Renewal Requirements.

(1) All community association manager licensees must satisfactorily complete a minimum of 20 hours of continuing education per biennial renewal cycle. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses. No license shall be renewed unless the licensee has completed the required continuing education.

(2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.

(3) The required 20 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003, F.A.C., in the following areas:

(a) 4 hours of legal update seminars. . The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII,617, 718, 719, 720 and 721, Florida Statutes, and other legislation, case law, and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.

(b) 4 hours of instruction on insurance and financial management topics relating to community association management.

(c) 4 hours of instruction on the operation of the community association's physical property.

(d) 4 hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.

(e) 4 hours of additional instruction in any area described in paragraph (3)(b), (3)(c) or (3)(d) of this rule or in any course or courses directly related to the management or administration of community associations.

(4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during a biennial renewal cycle.

(5) Course instructors may receive continuing education credit hours in the amount of contact hours approved by the Council for licensees only once every biennial renewal cycle for each approved course taught by the instructor.

(6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the continuing education requirements set forth in subsection (1), above, prior to license renewal. “More than 24 months” means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the continuing education requirements set forth in subsection (1) above, until the end of the next renewal cycle.

## 61E14-4.002 Continuing Education Provider Approval.

(1) A continuing education provider is a person or entity approved pursuant to this rule to conduct continuing education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of continuing professional education shall make application to the Council, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10), all of which are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department’s website at <http://www.myfloridalicense.com/dbpr/search_results.html?q=DBPR%200020-1>

To see other forms, enter the form number in the search field of this URL.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required by the Council:

(a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience and:

1. A bachelor's degree and 2 years’ experience in the subject matter being taught or

2. An associate's degree and 4 years’ experience in the subject matter being taught: or

3. Six years’ experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor’s qualifications at least 30 days prior to actually conducting the course.

(c) The appropriate continuing education provider application fee pursuant to subsection 61E14-3.001 (13) F.A.C.

(4) Continuing education provider status shall be valid from the date of approval until May 31 of every odd numbered year. Providers may renew their provider status within 90 days of May 31 of the odd numbered year. Those seeking renewal of provider status must reapply in a format acceptable to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(14). F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for continuing education. Renewal of provider status shall be for a two year period until May 31 of the next odd numbered year.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising approved courses, providers shall disclose the course approval number and the number of contact hours assigned by the Council and the course subject area. Providers shall not advertise courses as approved courses until they are actually approved by the Council.

(b) Providers shall maintain a system of recordkeeping which provides for storage of approved course offerings information.

(c) Records of individual courses shall be maintained by the provider for 6 years and shall be available for inspection by the Council and the Department or the Department’s designee.

(d) An attendance record shall be maintained by the provider for 6 years and shall be available for inspection by the Council and the Department or the Department’s designee. Providers must electronically provide to the Department a list of attendees taking a course within five (5) business days of the completion of the course. For home study courses, the provider must electronically supply the list of those individuals successfully completing the course by the 5th of the month following the calendar month in which the provider received documentation and was able to determine the successful completion of the course by the individual. The list and a certificate of attendance provided to the participant shall include the provider’s name, the name and license number of the attendee, the date the course was completed and course approval number and the total number of hours successfully completed in each type of continuing education credit granted as described in subsection 61E14-4.001(3), F.A.C. If the instructor is receiving credit as set forth in subsection 61E14-4.001(5), F.A.C., the instructor shall be listed as an attendee with the same information required above. Providers shall maintain security of attendance records and certificates.

(e) All information or documentation, including electronic course rosters, submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department. Failure to comply with the time and form requirements will result in disciplinary action taken against the provider. No provider may reapply for continuing education provider status until at least two (2) years have elapsed since the entry of the final order against the provider.

(f) Providers shall assure that sales presentations shall not be conducted during, immediately before or after the administration of any courses approved pursuant to this rule.

(6) A continuing education provider initially approved during the last 90 days prior to May 31 of an odd numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny continuing education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council retains the right and authority to audit courses offered by any provider approved pursuant to this rule.

(9) The Council shall rescind the provider status or reject individual courses offered by a provider if the provider disseminates any false or misleading information in connection with the continuing education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or the Department or are in violation of any of the provisions of Chapter 468, Part VIII or 455, Florida Statutes.

(10) The Council shall utilize expert groups or individuals as appropriate in implementing these rules.

## 61E14-4.003 Continuing Education Course Approval.

(1) Continuing education courses shall be valid for purposes of the continuing education requirement only if such courses have been approved by the Council. The Council shall approve a course as a continuing education course for the purpose of this rule when the following requirements are met:

(a) Application for course approval shall be received by the Council prior to the date the course is offered, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10). These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department’s website at <https://www.my>floridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(b) A course outline is submitted to the Council, along with the application, which describes the course's content and subject matter. A course outline shall address the following:

1. Learner Objectives. Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.

2. Subject Matter. The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-4.001(3), F.A.C.

3. Materials and Methods. It shall be demonstrated to the Council that:

a. Learning experiences and teaching methods are appropriate to achieve the objectives;

b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;

c. Principles of adult education are utilized in determining teaching strategies and learning activities; and

d. Currency and accuracy of subject matter will be documented by references or bibliography.

4. Evaluation. Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(c) A list of all instructors for the course, which shall include names, addresses, e-mail addresses and telephone numbers, shall accompany the course approval application.

(d) The course approval application must be accompanied by an approved provider number or the applicant must simultaneously apply for continuing education provider status pursuant to Rule 61E14-4.002, F.A.C.

(2) The course provider shall submit to the Council a sample continuing education course certificate of completion that complies with paragraph 61E14(4.002(5)(d), F.A.C. that is given to each course participant if the participant completes the course. In addition to the information required by paragraph 61E14 (4.002(5)(d), F.A.C., the certificate shall be provided to the course participant at the completion of the course. The certificate of completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION   
REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS

1940 NORTH MONROE STREET

TALLAHASSEE, FLORIDA 32399-1040

(3) Course approvals are valid for 24 months from the date of issuance. Providers must reapply for course approval within 90 days from the expiration of the 24 month period. Written application and course approval shall be in the same form as set forth in paragraph (1)(a) above. The Council shall be notified of any substantive changes made to approved courses during this period. Course approval shall be rescinded by the Council if such notification is not made or the changes fail to otherwise conform to this rule. Course approvals shall be automatically rescinded if the provider approval expires or is rescinded by disciplinary action or otherwise.

(4) Continuing education courses approved prior to the effective date of this rule remain valid for the purposes of fulfilling the continuing education requirement until the course approval expires.

## 61E14-4.004 Reactivation Continuing Education.

(1) Inactive Licenses. As a condition for reactivating an inactive license, a licensee must complete twenty (20) classroom hours of continuing education instruction, as required by Rule 61E14-4.001, F.A.C., all of which must have been completed within the current or immediately preceding licensure renewal cycles.

(2) Delinquent Licenses. As a condition for reactivating a delinquent license, a licensee must complete twenty (20) classroom hours of continuing education instruction, as required by Rule 61E14-4.001, F.A.C., all of which must have been completed during the licensure cycle in which the licensee becomes delinquent.

(3) All inactive or delinquent licensees applying for reactivation must take the legal update seminars required by paragraph 61E14-4.001(3)(a), F.A.C. for the current and immediately preceding year.

## 61E14-4.005 Prelicensure Education Provider Approval.

(1) A prelicensure education provider is a person or entity approved pursuant to this rule to conduct prelicensure education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of prelicensure education shall make application on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10) and DBPR CAM-4306 – Prelicensure Provider Application (Rev. 05/10). Forms DBPR 0020-1 and DBPR CAM-4306 are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department’s website at <https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp>.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required.

(a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience ; and

1. A bachelor’s degree and 2 years’ experience in the subject matter being taught; or

2. An associate’s degree and 4 years’ experience in the subject matter being taught; or

3. Six years’ experience in the subject matter being taught. Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor’s qualifications at least thirty (30) days prior to actually conducting the course.

(c) The appropriate prelicensure education provider application fee pursuant to subsection 61E14-3.001(15), F.A.C.

(d) A course outline which describes the course’s content and subject matter. A course outline shall address the following:

1. Learner Objectives. Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.

2. Subject Matter. The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-1.001(2), F.A.C.

3. Materials and Methods. It shall be demonstrated to the Council that:

a. Learning experiences and teaching methods are appropriate to achieve the objectives;

b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;

c. Principles of adult education are utilized in determining teaching strategies and learning activities; and

d. Currency and accuracy of subject matter will be documented by references or bibliography.

4. Evaluation. Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(4) Prelicensure education provider status shall be valid from the date of approval until May 31 of every even numbered year. Those seeking renewal of provider status must reapply on Forms DBPR 0020-1 and DBPR CAM 4306, referenced in Subsection (2) above, to the Council and submit the appropriate renewal fee pursuant to subsection

61E14-3.001(16), F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for prelicensure education.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising courses, providers shall disclose the number of hours assigned by the Council and the course subject area. Providers shall not advertise courses until they are actually approved by the Council.

(b) Providers shall maintain a system of record keeping which provides for storage of course offerings information.

(c) Records of individual courses shall be maintained by the provider for 4 years and shall be available for inspection by the Council.

(d) Providers shall furnish each participant with an individual certificate of attendance and completion of the course. A roster of participants shall be maintained by the provider for 4 years and shall be available for inspection by the Council. Providers shall maintain security of attendance records and certificates.

(e) The course provider shall submit to the Council a sample certificate of course completion that the course instructor shall provide each course participant if the participant completes the course. Such certificate shall include the course participant’s name, the title of the course, prelicensure education category, date completed and number of hours. The certificate shall be provided to the course participant at the completion of the course. The certificate of course completion shall contain, on its face, the following statement in capital letters in at least 12 point type: IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL’S OFFICE IN WRITING AT: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040.

(f) All information or documentation submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department.

(g) Providers shall assure that sales presentations shall not be conducted, immediately before or after the administration of any courses pursuant to this rule.

(6) A prelicensure education provider initially approved during the last 90 days prior to May 31 of an even numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny prelicensure education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council shall rescind the provider status if the provider disseminates any false or misleading information in connection with the prelicensure education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

## 61E14-5.003 Notice of Non-Compliance.

In accordance with Section 455.225(3), F.S., when a complaint is received, the Department may provide a licensee with a notice of non-compliance for an initial offense of a minor violation. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings. The Council hereby designates the following as “minor violations” as used in Section 455.225(3), F.S., for which a notice of non-compliance may be provided:

(1) Violations of paragraph 61E14-2.001(3)(a), F.A.C.: Withholding possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice.

(2) Violations of paragraph 61E14-2.001(3)(b), F.A.C.: Denying or delaying access to association official records to an owner or his or her authorized representative who is entitled to access within the timeframe and under the procedures set out in Sections 718.111(12), 719.104(2), or 720.303(5)(4), F.S.

(3) Violations of paragraph 61E14-2.001(3)(d), F.A.C.: Failure to maintain the records for a community association manager or management firm or the official records of any applicable association, as required by Sections 718.111(12), 719.104(2), or 720.303(4), F.S.

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# PUBLIC SWIMMING POOLS AND BATHING PLACES

[**64E-9.001 General.**](#_Toc333983921)

[**64E-9.0035 Exemptions.**](#_Toc333983924)

[**64E-9.004 Operational Requirements.**](#_Toc333983925)

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[**64E-9.018 Public Pool Service Technician Certification.**](#_Toc333983937)

## 64E-9.001 General.

(1) Regulation of public swimming pools and bathing places is considered by the department as significant in the prevention of disease, sanitary nuisances, and accidents by which the health or safety of an individual(s) may be threatened or impaired. Any change resulting in the operation of the pool in a manner unsanitary or dangerous to public health or safety shall subject the state operating permit to suspension or revocation. Failure to comply with any of the requirements of these rules shall constitute a public nuisance dangerous to health.

(2) All pools which do not meet the definition of private pools are public pools.

(3) A public pool owner or their agent shall first make application to the department for an initial operating permit on form DH 4159, Application for a Swimming Pool Operating Permit, 9/2015, herein incorporated by reference and available at <http://leon.floridahealth.gov/programs-and-services/_documents/DH4159AppPoolOperatingPermit.pdf> along with the accompanying information listed in Section [514.031(1)(a), F.S.](#swimmingPoolOperatingPermit514_031), the required fee and a copy of the construction plans and specifications. The application shall be deemed incomplete pursuant to Section 120.60, F.S., until a copy of the final building department inspection is received by the department.

(a) After submitting an application for an initial operating permit, the owner or agent shall have the plans reviewed and a permit issued for the construction of a public pool by the jurisdictional building department in accordance with the Florida Building Code, Building, Chapter 4, Section 454.1.

(b) Upon completion of initial construction, the pool shall not be opened by the owner/operator for public use until an operational permit is issued by the department. At construction completion, the owner/operator or their agent shall notify the department in writing to request the department’s initial operating permit inspection. A copy of the final building department inspection shall be submitted with this request.

(c) For modifications, the owner/operator or agent shall submit form DH 4159 to the Department and follow the same sequence in paragraphs (a) and (b), however, the department does not charge a state fee.

(4) Annually, the pool owner/operator shall apply for an operating permit renewal from the department on form DH 4159. Approval of the permit shall be based upon the pool’s compliance with this chapter, with the previous operating permit, and the maintenance of the pool in the same functional, safety, and sanitation conditions as approved by the jurisdictional building department or the department. For the purposes of this determination, department staff shall refer to and use the Florida Building Code (FBC), Building Chapter 4, public swimming pool Section 454.1, or its predecessor, that was in effect at the time of the pool’s construction permitting. Annual operating permits expire on June 30.

<http://leon.floridahealth.gov/programs-and-services/_documents/DH4159AppPoolOperatingPermit.pdf>

(5) The 2014 FBC section 454.1 is hereby incorporated by reference, has been deemed copyright protected, and is available for inspection at the Department of Health, Bureau of Environmental Health, 4025 Esplanade Way, Tallahassee, Florida 32399-1710 or at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

## [64E-9.0035](https://www.flrules.org/gateway/ruleNo.asp?id=64E-9.0035" \t "ruleNo) Exemptions.

(1) A person seeking an initial exemption, or an existing facility claiming an exemption from department regulation pursuant to the provisions of Section 514.0115, F.S., shall submit an application and supportive documentation to the department, as described below.

(a) Applicants for an exemption pursuant to Section 514.0115(2)(a) or (2)(b), F.S., shall submit either a completed form *DH 4065, Application for a Swimming Pool Exemption Status – 32 Units or Less, 03/98,* <http://duval.floridahealth.gov/programs-and-services/environmental-health/swimming-pools-spas-and-bathing-places/_documents/pool-exempt-app-32-less.pdf> or a completed form *DH 1704, Application for a Swimming Pool Exemption Status More Than 32 Units, 03/98*, <http://duval.floridahealth.gov/programs-and-services/environmental-health/swimming-pools-spas-and-bathing-places/_documents/pool-exempt-app-32.pdf> both of which are hereby incorporated by reference. [[3]](#footnote-3)

Copies of these forms are also available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-06894> and, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06895>.

(b) For purposes of determining exemption status, the term condominium shall be as defined in Chapter 718, F.S., and the term cooperative shall be as defined in Chapter 719, F.S. Applicants shall provide either the recorded declaration of condominium or the recorded cooperative documents and any additional documents which establish the criteria set forth in Section 514.0115(2)(a) or (2)(b), F.S.

(2) Beginning July 1, 2010, exemptions shall be renewed by July 1, every five years. Applicants seeking renewal, who have no changes to the pool or ownership, shall only submit the application form. If swimming pool related or ownership changes have been made, this information shall be submitted along with the application form.

(3) A person who received an exemption shall contact the department if the conditions upon which the exemption was granted change so as to eliminate the exemption status. Under such circumstances, the pool shall comply with the provisions of this chapter and Chapter 514, F.S.

(4) An exemption from department rules does not exempt the pool from other federal, state, and local requirements.

## 64E-9.004 Operational Requirements.

(1) Water Quality – The water supply for all pools shall be an approved potable water system or shall meet the requirements for potable water systems by the submission from the operator of annual bacteriological and chemical laboratory reports to the county health department. Salt water sources are exempt from the potable water chemical standards except for iron and color requirements.

(a) Cross-connection prevention – To safeguard water quality, devices or systems shall be operational and maintained in their original functional condition.

(b) Bacteriological quality – The pool water shall be free of coliform bacteria contamination.

(c) Clarity – The pool water shall be 0.5 or less NTU and the main drain grate must be readily visible from the pool deck.

(d) Chemical quality – Chemicals used in controlling the quality of the pool water shall be tested and approved using the NSF/ANSI Standard 60-2011, Drinking Water Treatment Chemicals-Health Effects dated May 2011, which is incorporated by reference in these rules and shall be compatible with other accepted chemicals used in pools. The following parameters shall be adhered to for pool water treatment:

1. pH – 7.2 to 7.8.

2. Disinfection – Free chlorine residual shall be 1 milligram per liter (mg/L) to 10 mg/L, inclusive, in conventional swimming pools and 2 mg/L to 10 mg/L, inclusive, in all other type pools such as spa-type pools and interactive water fountains; bromine residual shall be 1.5 mg/L to 10 mg/L, inclusive, in conventional swimming pools and 3 mg/L to 10 mg/L, inclusive, in all other type pools. Except that, the following maximum disinfectant levels shall apply to indoor conventional swimming pools: 5 mg/L free chlorine or 6 mg/L bromine.

3. When oxidation-reduction potential (ORP) controllers are required, the water potential shall be kept between 700 and 850 millivolts. Use of these units does not negate the manual daily testing requirement of subsection 64E-9.004(10), F.A.C.

4. Cyanuric acid – 100 mg/L maximum in pools, with 40 mg/L as the recommended maximum, and 40 mg/L maximum in spa pools.

5. Quaternary ammonium – 5 mg/L maximum.

6. Copper – 1 mg/L maximum.

7. Silver – 0.1 mg/L maximum.

(e) Landscape irrigation water that wets the wet deck area of the pool, the pool itself, enters the collector tank, or wets an interactive water feature must be potable water from a public water system or shall meet the bacteriological quality of potable water as evidenced by annual laboratory analysis submitted to the department. Reclaimed water may not be used in these areas. If reclaimed water is used in the vicinity of the pool (inside of the pool fence or within 100 feet of the pool water’s edge) it must employ drip irrigation or soaker hoses. Signs shall be posted notifying pool patrons that reclaimed water is in use, and is not to be consumed.

(2) Manual addition of chemicals will be allowed under special conditions and requires that the pool be closed prior to addition and for at least 1 hour period after addition or a longer period as necessary for sufficient and safe distribution of the chemical. After treatment for breakpoint chlorination and algae prevention, use of the pool can be resumed when the free chlorine levels drop to 10 mg/L.

(3) Cleanliness – The pool and pool deck shall be kept free from sediment, floating debris, visible dirt and algae. Pools shall be refinished when the pool surfaces cannot be maintained in a safe and sanitary condition.

(4) Food, beverages, glass containers, and animals are prohibited in the pool. Individuals with a disability and service animal trainers may be accompanied by a service animal, as defined in Chapter 413.08, F.S., but the service animal is not allowed to enter the pool water or onto the drained area of an interactive water feature (IWF) in order to prevent a direct threat to the health of pool patrons.

(5) The pool recirculation system must be operated at all times when the pool is open for use. The recirculation system may be shut off three hours after the pool closes but must resume operation three hours before opening the pool. Shut down time must be controlled by a time clock. When a variable speed pump is used, the recirculation system shall be operated such that it achieves the equivalent of 6 hours of treatment at 100% design flowrate during the daily closed period, or at least one complete water volume turnover, whichever is greater. Exception: vacuum DE systems are excluded from this allowance.

(6) The pool water level must be maintained at an elevation suitable for continuous skimming without flooding during periods of non-use.

(7) When use of a public swimming pool requires an admission or a membership fee, the most recent pool inspection report shall be posted in plain view of existing and potential members and patrons.

(8) Footbaths are prohibited.

(9) Test kits are required to be on the premises of all pools to determine free active chlorine and total chlorine using N, N-Diethyl-p-Phenylenediamine (DPD), or bromine level, total alkalinity, calcium hardness, and pH. NSF/ANSI Standard 50-2012 certified water quality test devices/kits or specific laboratory analysis methods identified by the chemical product manufacturer must be available to determine the concentration in pool water of all NSF/ANSI Standard 60-2011 approved chemicals that are fed or added to a public pool, or the chemical cannot be used. NSF/ANSI Standard 50-2012, Equipment for Pools, Spas, Hot Tubs and other Recreational Water Facilities, September 16, 2012, is hereby incorporated by reference, has been deemed copyright protected, and is available for review at the Department of Health, Bureau of Environmental Health, 4025 Esplanade Way, Tallahassee, Florida 32399-1710 or at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

(a) If the following chemicals are fed or added to the pool water, then test kits for the specific chemical must be used: cyanuric acid, sodium chloride, quaternary ammonium, ozone and copper.

(b) When silver is added as a supplemental disinfectant, a water analysis must be done every six months and be submitted to the department upon request.

(c) A test kit may be used for multiple pools, provided the pools have common ownership and they are located on contiguous property.

(d) The test kit shall be capable of measuring the level of disinfectant in the normal operating range.

(10) The keeping of a daily record of information regarding pool operation, using form DH 921, Monthly Swimming Pool Report, 3/98, hereby incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06896>, shall be the responsibility of the pool owner or operator. Customized report forms may be substituted provided they contain the appropriate information and are made available to the department. The completed report shall reflect manually conducted pool water tests for pH and disinfectant levels at least once every 24 hours, and weekly testing for cyanuric acid when chlorinated isocyanurates are used at spas and pools, and shall be retained at the pool and made available to the department upon request. Any able person can test the pool water and record it in the report. [[4]](#footnote-4)

(11) Should a human fecal accident occur, the pool operator or owner shall comply with all recommendations found in the Centers for Disease Control and Prevention’s (CDC) “Fecal accident response recommendations for Aquatics Staff” dated February 15, 2008, hereby incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06897>. Alternative emergency disinfection methods developed by industry, or by the application of new disinfection technology, or by the use of chemical disinfectants that are effective, safe and appropriate for public bathing facilities, and are approved by the CDC, may also be used.

## 64E-9.008 Supervision and Safety.

(1) All owners, managers, lifeguards or swimming instructors in charge of, or working at, public swimming pools shall be responsible for the supervision and safety of the pool.

(2) Lifeguard and Swimming Instructor Requirements.

(a) Definitions:

1. “Lifeguard” – Person responsible for the safety of the users of a public swimming pool.

2. “Nationally Recognized Aquatic Training Program” – A training and certification program for swimming instructors and lifeguards equivalent to the programs offered by the American Red Cross or the Y.M.C.A.

3. “Swimming Instructor” – Person who offers progressive swimming instruction.

(b) Lifeguards or swimming instructors, if provided, shall be in full charge of persons using the pool and shall have authority to enforce all rules. Lifeguards and swimming instructors shall be certified in lifeguarding or swimming instruction, respectively, by the American Red Cross, the YMCA or other equivalent national aquatic training agencies which meet the established standards, objectives and standards of care provided in the American Red Cross or YMCA programs. For the purpose of this rule, the standards found in the 2007 edition of the American Red Cross Lifeguarding Instructors Manual, the 2009 edition of the American Red Cross Water Safety Instructors Manual, the On the Guard, The YMCA Lifeguard Manual, (2011) Fifth Edition, (YMCA), The Youth and Adult Aquatic Program Manual (1999), and (YMCA) The Parent/Child and Preschool Aquatic Program Manual (1999), are hereby adopted by reference, have been deemed copyright protected, and are available for review at the Department of Health, Bureau of Environmental Health, 4025 Esplanade Way, Tallahassee, Florida 32399-1710 or at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250. Swimming instructors of developmentally disabled students shall also be certified in accordance with Section 514.072, F.S.

(c) Lifeguards and swimming instructors shall also be currently certified in first aid and in adult, child and infant cardiopulmonary resuscitation through the American Red Cross, the American Heart Association, the National Safety Council, the American Academy of Orthopedic Surgeons, by Medic First Aid International, Inc., or by American Safety and Health Institute.

(d) Swim coaches are exempted from the swimming instructor certification requirement when training advanced level swimmers for competition.

(e) Verification of equivalence, as required above, shall be the responsibility of the department. The department shall form an ad hoc advisory group composed of professionals in the field of aquatics. This group shall consist of five members and shall make recommendations to the department regarding the equivalence of lifeguard or swimming instructor certification programs submitted to the department under paragraph (b) above. Members shall be appointed for a period of 3 years with such appointments being staggered so that the terms of no more than two members expire in any one year.

(f) Lifeguard, swimming instructor, cardiopulmonary resuscitation and first aid certificates or photocopies thereof shall be maintained at the pool location and be available for inspection by department personnel at any reasonable hour.

(3) Safety Equipment – All pools shall be equipped with the following:

(a) Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices as required by section 514.0315, F.S.

(b) A shepherd’s hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd’s hook on each of the longer sides of the pool.

(c) At least one 18 inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool.

(d) Safety equipment shall be mounted in a conspicuous place and be readily available for use.

(e) Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from this shepherd’s hook and lifesaving ring requirement.

(4) Safety Lines – All pools with a slope transition shall maintain safety line anchors and a safety line in place at all times. A safety line may be temporarily removed from the pool for patrons to swim laps only when there is a safety attendant or lifeguard present, and it must be reinstalled to its proper location upon completion of the exercise.

(5) Pool covers and solar blankets shall only be used during times when the pool is closed. If a pool cover or solar blanket is installed, it shall be secured around the entire perimeter and designed to support a live load of an adult person, or the pool area shall be inaccessible to unauthorized individuals during times of cover or blanket use.

(6) Pool Rules and regulations – Rules for bathers shall be posted as approved by the jurisdictional building department.

(7) Night swimming – Pools shall not be open for swimming at night unless lighting is provided as approved by the jurisdictional building department. Pools authorized for night swimming shall be noted on the operating permit issued by the department. Night swimming shall be considered one half hour before sunset to one half hour after sunrise.

(8) Pools with heaters shall have a maximum water temperature of 104º F and a functional in-line thermometer.

(9) General Pool Maintenance for Patron Safety.

(a) The bathing load shall be posted and the owner/operator shall not permit the bathing load to be exceeded at any time.

(b) The filtration system for swimming pools shall be maintained as capable of meeting operating performance standards as identified on the most current operating permit. Flowrate may not be reduced or adjusted after the initial operating permit is issued unless approved in advance by the department. All other types of projects shall be maintained as sized according to the anticipated bathing load and proposed uses.

(c) Access – All pools shall be maintained with a means of access as approved by the jurisdictional building department.

(10) General Equipment Maintenance for Safety –

(a) Recirculation and treatment equipment such as, but not limited to filters, recessed automatic surface skimmers, ionizers, ozone generators, UV systems, automatic controllers, disinfection feeders and chlorine generators must be tested and approved using the NSF/ANSI Standard 50-2012. The standard and a list of certified products is available from [www.NSF.org](http://www.nsf.org/)., and product certifications are available from other American National Standards Institute (ANSI) 3rd party accredited product certifiers. If standards do not exist for a specific product, the manufacturer should consult NSF or other ANSI accredited product certifier to develop such standards.

(b) The recirculation system shall be operated to maintain a minimum of four turnovers of the pool volume per day (once per 6 hours). Pools that are less than 1000 square feet at health clubs are required to provide eight turnovers per day (once per 3 hours). Other pool types shall maintain the following minimum pool turnover rate: spa pool – 30 minutes; IWF – 30 minutes; wading pool ‒ 1 hour; water activity pool – 1 hour in pools two foot deep or less, or 2 hours in pools over two foot deep; zero depth entry pool – 1 hour in area less than three feet deep; water slide plunge pool – 2 hours; river ride – 3 hours, and wave pool – 3 hours. Validation of the turnover rate shall be determined by the rate of the flow indicator.

(c) For compliance with Section 514.0315, F.S., and to ensure the safety of bathers:

1. All safety features shall be tested and replaced when necessary, in accordance with the manufacturer’s specifications. The operations manual shall be on site.

2. The owner/operator shall provide a completed form DH 4157, Pool Owner/Operator Verification of Entrapment Safety Features, 09/2015, herein incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06898>, to the department when a change in the safety feature occurs.

3. For an existing pool with a suction limiting vent (SLV) system, the system shall be tested annually by a Chapter 489, F.S., licensed pool contractor or a Florida licensed professional engineer to validate that the vacuum release timing is in compliance with the criteria for safety vacuum release systems in Section 514.0315(2)(a), F.S. A copy of the testing shall be submitted to the department with the annual operating permit renewal application.

(d) Filters – Filters sized to handle the required recirculation flow shall be maintained to perform as originally installed in accordance with the manufacturer’s specifications and remain functional as designed.

1. The maximum filtration rate in gallons per minute per square foot of filter area shall be: fifteen (15), or twenty (20) if so approved utilizing the procedure in this chapter below for high rate sand filters, three (3) for rapid sand filters, three-hundred-seventy-five thousandths (375/1000) for pleated cartridge filters, and two (2) for Diatomaceous Earth (D.E.) type filters.

2. Pressure filter systems shall be maintained to perform as originally equipped with a functional air relief valve, influent and effluent pressure gauges with minimum face size of two inches reading 0-60 pounds per square inch (psi), and a sight glass when a backwash line is required.

3. Vacuum filter systems shall be maintained to perform as originally equipped with a functional vacuum gauge which has a two inch face and reads from 0-30 inches of mercury.

4. D.E. filter elements shall be maintained as installed with a minimum one inch clear spacing between elements. All cartridges used in public pool filters shall be maintained as permanently marked with the manufacturer’s name, pore size and area in square feet of filter material. All cartridges with end caps shall have the permanent markings on one end cap. The D.E. filter tank and elements shall be maintained as installed, such that the recirculation flow draw down does not expose the elements to the atmosphere whenever only the main drain valve is open.

(e) Disinfection and pH adjustment shall be maintained as added to the pool recirculation flow using automatic feeders meeting the requirement of NSF/ANSI Standard 50-2012. All chemicals shall be fed into the return line after the pump, heater and filters, unless the feeder was designed by the manufacturer and approved by the NSF to feed to the collector tank or to the suction side of the pump. Feeding chlorinated isocyanurates disinfectant is prohibited in spas, wading pools and interactive water features. Dual or multiuse feeders can be used if approved for and feeding an acceptable rate of alternate disinfectant. Where pH adjustment feeders are not present on these three types of pools that were required to replace chlorinated isocyanurates feeders, pH adjustment feeders shall be installed. Exception: spa pools of 100 square feet or less with original department approval to be built without a pH adjustment feeder.

1. Gas chlorination – When gas chlorination is utilized, the chlorinator shall be maintained as capable of continuously feeding a chlorine dosage of six (6) mg/L to the recirculated flow of the filtration system.

a. Gas chlorinators shall be maintained in above grade rooms and in areas which are inaccessible to unauthorized persons.

b. When booster pumps are used with the chlorinator, the pump shall use recirculated pool water supplied via the recirculation filtration system. The booster pump shall be maintained as electrically interlocked with the recirculation pump to prevent the feeding of chlorine when the recirculation pump is not operating.

2. Hypohalogenation and Electrolytic chlorine generators – The hypohalogenation type feeder and electrolytic chlorine generators shall continuously feed a dosage of six (6) mg/L to the minimum required turnover flow rate of the filtration systems. Required backup chlorine feeders and generators shall be operated at least once per month and this test shall be recorded in the monthly pool log.

3. Feeders for pH adjustment – Feeders for pH adjustment shall be provided on all pools. pH adjustment feeders shall be maintained as positive displacement type, shall be adjustable from zero to full range, and shall have an electrical interlock with the circulation pump to prevent discharge when the recirculation pump is not operating. When soda ash is used for pH adjustment, the maximum concentration of soda ash solution to be fed shall not exceed one-half pound soda ash per gallon of water. Feeders for soda ash shall be capable of feeding a minimum of three gallons of the above soda ash solution per pound of gas chlorination capacity. The minimum size of the solution reservoirs shall be maintained as not be less than 50 percent of the maximum daily capacity of the feeder. The solution reservoirs shall be marked to indicate the contents.

4. Ozone generating equipment –

a. The concentration of ozone in the return line to the pool shall not exceed 0.1 mg/L.

b. Ozone generating equipment shall be maintained as equipped with an air flow meter and a means to control the flow. The generator shall be maintained as electrically interlocked with the recirculation pump to prevent the feeding of ozone when the recirculation pump is not operating. A flow sensor controller can also be used to turn off the feeder when flow is not sensed.

5. UV equipment used for any purpose shall constantly produce a dosage of at least 40 ml /cm2 (milliJoules per square centimeter).

6. Ozone generators shall produce no more than a pool water contact concentration of 0.1 milligrams per liter (mg/L). The contact concentration in mg/L shall be calculated as the amount of ozone in grams per hours divided by the recirculation flow rate in gallons per minute times 4.41.

(11) Maintenance for Safety of Wading Pools–

(a) Automated Oxidation Reduction Potential (ORP) and pH controllers with sensing probes shall be maintained to assist in maintaining proper disinfection and pH levels.

(b) All wading pools shall have drainage to waste without a cross-connection through a quick opening valve to facilitate emptying the pool should a fecal accident occur. Should a fecal accident occur, the requirements of this Chapter shall be met or the pool may be drained and both the pool and the filter system and all plumbing shall be properly disinfected.

(12) Maintenance for Safety of Spa Pools–

(a) Oils, body lotions, and minerals – Oils, body lotions, and minerals or materials not associated with chemicals used for water chemistry balance, algae control, and disinfection of the water are prohibited in the spa pool.

(b) Automated Controllers – Automated Oxidation Reduction Potential (ORP) and pH controllers with sensing probes shall be provided and maintained on spa pools to assist in maintaining proper disinfection and pH levels.

(c) Spa pool signs shall be posted as approved by the jurisdictional building department.

(d) Should a fecal accident occur, the requirements of this chapter shall be met or the spa pool may be drained and both the spa pool and the filter system and all plumbing shall be properly disinfected.

(13) Maintenance for Safety of Water Recreation Attractions and Special Purpose Pools – A lifeguard and/or safety plan shall be submitted to the department with the application for the initial operation permit of water slide plunge pools and water activity pools when climbable structures are installed.

(a) Water slide plunge pools.

1. Pump reservoir volume minimum shall be equal to three minutes of the combined flow rate in gpm of all filter and slide pumps.

2. Pump reservoirs shall be accessible only to authorized individuals.

3. Filter areas minimum requirements shall be maintained as twice the filter areas specified for the recirculation rates stipulated for other pools in this chapter and FBC Section 454.1. The filtration system shall be capable of returning the pool water turbidity to five-tenths NTU within eight hours or less after peak bather load.

4. Disinfection equipment shall be maintained as capable of feeding 12 mg/L of halogen to the continuous recirculation flow of the filtration system.

(b) Water activity pools.

1. The recirculation-filtration system of water activity pools shall achieve a minimum of one turnover every two hours for water activity pools over two feet deep, and in one hour for these pools that are two feet deep or less.

2. All water activity pool signs shall be posted as approved by the jurisdictional building department.

(c) The recirculation-filtration system for zero depth entry pools shall be of a minimum of one turnover every two hours in the area of the pool that is three feet deep or less. In the remainder of the pool where the depth is greater than three feet, the system shall have a maximum six hour turnover rate.

(d) Special purpose pool projects may deviate from the requirements of other sections of this chapter. Only those deviations necessary to accommodate the special usage shall be allowed and all other aspects of the pool shall comply with the requirements of this chapter and the FBC section 454.1. The operating permit shall state the purpose for which the pool is to be used.

(e) Interactive Water Features (IWFs).

1. An automatic skimmer system shall be maintained if provided in the collector tank. A variable height skimmer may be used or a custom surface skimmer device may be substituted.

2. Chemical feeders shall be maintained as in accordance with this chapter, except that the disinfection feeder shall be capable of feeding 12 mg/L of free chlorine to the pressure side of the recirculation system or the collector tank (based upon a hypothetical 30 minute turnover of the contained volume within the system). Automated Oxidation Reduction Potential (ORP) and pH controllers with sensing probes shall be provided to assist in maintaining proper disinfection and pH levels.

3. Hydraulics.

a. The filter system shall filter and chemically treat all water that is returned to the spray features. The filter system shall draft from the collector tank and return filtered water directly to the spray features. Excess water not required by the spray features shall be returned to the collector tank.

b. Alternatively, the contained volume of the system may be filtered and chemically treated based upon a 30 minute turnover of the contained volume with 100% returned to the collector tank by manifold piping. If this alternative is chosen, all water returned to the spray feature(s) must also be treated with an Ultraviolet (UV) light disinfection equipment to accomplish protozoan destruction in accordance with sound engineering. This alternative must have the ability to feed 6 mg/L free chlorine to the feature water as it is returned to the spray feature. The UV disinfection equipment shall be electrically interconnected such that whenever it fails to produce the required UV dosage, the water spray features pump(s) and flow will be immediately stopped.

c. An automatic water level controller shall be provided.

d. Where the filter system described in sub-subparagraph 3.a. above is utilized, a second filter system and disinfection system shall be provided to treat the water in the collector tank when the feature/filter pump is not in operation. Said system shall be capable of filtering the total volume of water in the collector tank in 30 minutes and the disinfection system shall be capable of providing 12 mg/L of disinfectant to this flow rate.

4. All IWF pool rule signs shall be posted as approved by the jurisdictional building department.

(f) Rules and regulations for water theme parks shall be posted as approved by the jurisdictional building department.

## 64E-9.013 Bathing Places.

(1) General – All public bathing places are required to conduct monitoring for water quality, reporting these results to the department, notice to the department and public notification upon exceedance of water quality violations. As of April 29, 2012, bathing place operation permits are no longer required from the department by law.

(2) Operational water quality – The water shall be free of chemical and physical substances known or suspected of being capable of creating toxic reactions or skin or membrane irritations. Algae and aquatic vegetation shall be controlled so that no hazard to bathers results.

(a) Bacteriological samples shall be collected by the owner/manager and tested monthly. A set of two samples shall be collected for every 500 feet of shoreline, the samples shall be taken a foot below the surface in three feet of water and at least 25 feet apart. The samples shall be analyzed by a DOH certified laboratory using EPA approved methods for ambient water and the results submitted to the department within 10 days after the end of the month.

1. Should the test results of these samples exceed the standards in subsection 64E-9.013(3), F.A.C., below, the county health department shall be notified within 24 hours of receipt of results by the owner/manager from the lab, and re-sampling by the owner/manager shall be required within 24 hours. All sampling results shall be submitted to the county health department.

2. If 24 hour re-sampling is not possible for any reason, then the bathing place owner/manager shall immediately post a No swimming advisory based upon these initial results during the time period waiting for re-sampling results. If the 24 hour confirmation samples reveal an exceedance of the standards, the bathing place owner/manager shall immediately post a No swimming advisory, form DH 4158, Bathing Place Public Health Advisory Sign – Poor Water Quality, 02/13, incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06899> or sustain the already-posted advisory until additional testing reveals the water meets single sample standards again. The department shall post the advisory if the owner/manager does not. Only samples collected after the initial advisory shall be used to compare and calculate when the advisory may be rescinded. If a pollution source is identified, that source shall be eliminated before rescinding the bathing place advisory.

(b) County health departments shall perform an inspection upon receipt of test results exceeding standards, or upon receipt of a complaint from the public concerning safety, sanitation, illness, or water quality, and this inspection may include:

1. A site inspection in light of the original sanitary survey, changed natural conditions, changed use conditions, and originally permitted facilities.

2. A bacteriological test consisting of the normal monthly sampling requirement. The fecal coliform, *E. coli* or enterococci density must not exceed the single sample standards of subsection 64E-9.013(3), F.A.C.

3. A water clarity test wherein an 8'' black and white secchi disk shall be visible to a minimum depth of four feet.

4. The bathing place shall be posted with an advisory or swimming prohibited, as appropriate, by the owner/manager or the department if inspection reveals water clarity violations, unsafe bacterial test results, or immediate hazards to health or safety such as, but not limited to sewage in water, broken glass, dangerous wildlife, hazardous structural or electrical conditions, toxic algal blooms, or other serious disease agents present.

5. Muck or silt shall not be present from the shoreline to a depth of five feet and aquatic vegetation shall be controlled.

6. Should an incident or finding of the county health department warrant it, site specific signage shall be provided. The bathing load shall be posted and due consideration shall be given to safety guidelines such as steep slope, diving areas, deep water, underwater obstruction, dangerous wildlife, or lifeguard not on duty. Additional signage shall be provided if the bathing area is longer than 300 feet.

7. Platforms, diving boards, docks, beaches and walkways shall be kept clean and in good repair. Diving areas shall be readily identified, and shall have and maintain adequate water depth for safe diving based on the depth requirements of public swimming pool construction requirements.

8. Glass items and domestic animals are prohibited in the bathing area and on the adjacent beach area.

9. Sanitary facilities shall be provided and maintained in good working order with all necessary supplies.

(3) Bacteriological Standards – Either fecal coliform, *E. coli, or* *enterococci* bacteria shall be tested for, at the option of the permit holder. All samples tested will be considered to determine compliance, unless found to be invalid by the certified lab or county health department. The *enterococci* density shall not exceed 61 colony forming units (CFU) per 100 mL of water in any single sample; or the *E. coli* density shall not exceed 235 CFU per 100 mL of water in any single sample; or the fecal coliform shall not exceed an average of 200 CFU per 100 mL of water, nor 400 per 100 mL of water in 10 percent of the samples, nor 800 CFU per 100 mL of water in a single sample. This average shall be expressed as geometric means using at least ten samples per 30 day period. Multiple samples collected on any one day during routine monthly sampling shall be arithmetically averaged to determine compliance for the bathing place.

**64E-9.015 Fee Schedule.**

(1) Operating Permit Issuance for Swimming Pools:

(a) Initial Operating Permit – $150.00.

(b) Annual Operating Permit or Annual Renewal – Full annual fee if the authorization was issued from July 1st to December 31st; one half the annual fee if the authorization was issued from January 1st to June 30th. Payment is not required for a replacement copy of an operating permit or reissuances of an operating permit due to change of ownership or name.

1. Pools greater than 25,000 gallons and bathing places – $250.00.

2. Pools of 25,000 gallons or less – $125.00.

3. Exempted condominiums/cooperatives with over 32 units – $50.00.

(2) Variances – Review of application for variance – $300.00

## 64E-9.016 Variances.

A variance from requirements of these rules may be requested by the pool owner or their representative to relieve or prevent hardship only in cases involving deviations from the rule, when it is shown that the hardship was not caused intentionally by the action of the applicant, where no reasonable alternative exists and the health and safety of the pool patrons is not at risk. Application for variance shall be submitted through the county health department utilizing DOH Form 4080, Application for Variance from Chapter 64E-9, F.A.C., 07/08, which is incorporated by reference and available at

<http://www.flrules.org/Gateway/reference.asp?No=Ref-06981>.

Each application can be accompanied by supportive materials such as drawings, pictures or manufacturer’s specifications and a fee must be paid in accordance with subsection 64E-9.015(2), F.A.C. Applications must be received by the county health department at least 30 days prior to the scheduled meeting of the Governor’s Swimming Pool Advisory Board. Walk-in applications at the Board meeting may be reviewed only if there is time available as determined by the Chair. Each walk-in applicant must provide evidence they: have paid the variance fee to the county health department, have received a department review of the application, and applicant provides eight full sets of the application package to the Board.

## 64E-9.017 Enforcement.

Any public pool can be immediately posted closed by the department as not being in compliance with this chapter whenever any of the following conditions occur:

(1) (a) The disinfectant level is below the minimum or above the maximum that is prescribed in this chapter.

(b) The pH of the pool water is below 7.2 or above 7.8.

(c) The clarity of the pool water is such that the main drain grate is not readily visible from the pool deck.

(d) The recirculation system or disinfection feeding equipment is missing or not functioning.

(e) Any portion of the anti-entrapment system is missing or not functional, or a main drain cover/grate is missing, unsecured, improperly secured, damaged, or does not meet the requirements of this chapter by the dates specified.

(f) Operation without a valid permit.

(g) Direct suction exists on the main drain or other outlets, except vacuum fittings, automatic surface skimmer(s), and their equalizer grates provided the flow velocity through the equalizer grate does not exceed 1.5 feet per second, or the corrective actions specified in this chapter and Section 514.0315, F.S., are not completed by dates specified.

(h) Any other conditions which endangers the health, safety, or welfare of persons using the pool, which may include, but is not limited to: a drowning hazard, broken glass, sharp edged or broken tile or metal, fecal accident(s), electrical code violation, or severe biological growth. The department may attach a sign that states “Pool Closed. This pool is not in compliance with Chapter 64E-9, F.A.C., and may endanger the health, safety or welfare of persons using this facility”. With the department’s permission, the pool operator may remove signs from the pool area immediately following correction of the cited deficiencies provided the county health department is notified of this action.

(2) Correction of Unauthorized Modifications.

(a) When it is discovered that a pool has been modified from the original approved plans and application, corrective actions and replacement shall be allowed to occur to bring the pool back into compliance with the plans and applications as approved without the requirement for a modification permit, unless any of the following exist:

1. Critical conditions identified in paragraphs 64E-9.017(1)(d) and (g), F.A.C., above are discovered.

2. The original approved plans and application are not available for verification.

3. The extent of the unauthorized modification cannot be readily determined by the department or the design engineer.

4. The corrective construction or replacement will place the pool in violation of current pool construction rules.

5. The construction repair is regulated under the FBC 454.1 by the jurisdictional Building official.

6. Other unsanitary or unsafe conditions apparent to the department or the design engineer.

(b) Whenever any of the conditions numbered 1 through 6 above exist, the owner shall make application to the jurisdictional Building department for a modification permit to authorize any construction required to restore the condition of the pool to an approved or original condition. A copy of this permit application shall be provided to the department.

## 64E-9.018 Public Pool Service Technician Certification.

An individual who services a public pool by maintaining the cleanliness, water quality and chemical balance of public pools shall be certified. To be certified an individual must demonstrate knowledge of public pools. Examples of such knowledge include: pool cleaning, general pool maintenance, make-up water supply, bacteriological, chemical and physical quality of water and water purification, testing, treatment, and disinfection procedures. To ensure that the pool technicians are knowledgeable, said technician shall attend a training course of national recognition that is approved by the department of at least 16 hours in length and shall pass a test acceptable to the department. Certification is conferred upon an individual and is nontransferable. Certification does not imply any licensure and specifically not that of contractor as regulated by the Department of Business and Professional Regulation under Section. 489.105(3)(j), (k),or(l), F.S. A certified pool technician may not affect the structural integrity of the pool or equipment, and shall not delegate work to others, including employees, that are not themselves certified under this section, or otherwise exempt from this provision per Chapter 514, F.S.

(1) Training shall include the following study topics for the hours indicated:

(a) Swimming pool calculations 1 hour;

(b) Filter type and filtration circulation 4 hours;

(c) Water chemistry - balancing & testing 5 hours;

(d) Spas and warm water pools 1 hour;

(e) Pool and spa maintenance 2 hours;

(f) Operational and safety requirements 2 hours; and

(g) State health code Chapter 64E-9, F.A.C., 1 hour.

(2) Course materials must be provided that cover the required topics in detail The course approval shall be contingent upon their meeting the items listed in subsection (1) above and the subjects listed in Section 514.075, F.S. The test approval shall be contingent upon all of the questions being related to the subject areas listed in subsection (1) above and the subjects listed in Section 514.075, F.S., with at least 10% of the questions from the subject areas in paragraphs (1)(a) through (f) above, and the remaining 40% covering any of the seven pool subject areas listed in this rule or Section 514.075, F.S. The minimum passing score for the test shall be no less than 70% correct for all questions. There shall be a minimum of 50 questions.

(3) Any individual or organization requesting the department to review their courses for compliance with the requirements of this rule, must submit copies of their training materials to the department prior to providing that training within the state. A copy of the test to be given, answers to the test questions, and a statement indicating the length of time a classroom topic will be conducted shall be included. The department shall review the materials and inform the applicant of its findings within 60 days from receipt of all training materials.

(4) The department shall deem certified any individual who has been proven certified by a course of national recognition.

(5) This requirement does not apply to a person or the direct employee of a person permitted as a public pool operator under Section 514.031, F.S. Further, persons licensed under Section 489.105(3)(j), (k), or (l), F.S., shall be deemed certified.

(6) Proof of certification shall be posted conspicuously in the equipment room of each pool serviced or must otherwise be available for inspection by the department.

(7) Any reference to department approval shall state no more than: “This course is approved by the Florida Department of Health for student certification as a Public Pool Service Technician under Chapter 514, F.S., and Chapter 64E-9, F.A.C.”

# Florida Real Estate Commission

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# CHAPTER 61J2-1 REGISTRATION DETAILS AND FEE STRUCTURE

## 61J2-1.011 License Fees and Examination Fees.

(1) Every person, partnership, limited liability partnership, corporation or limited liability company deemed and held to be a licensee under Chapter 475, F.S., must register with the Florida Real Estate Commission (Commission) and must secure a license for each license period.

(2) The application fee for licensure shall be as follows:

Initial application

Broker $14.45

Sales Associate $14.75

(3) Effective July 1, 2014, the biennial license fee for an active licensee shall be:

Broker $72.00

Sales Associate $64.00

Branch office for Broker $64.00

(4) The fee and the time of payment for inactive license shall be the same as for an active license, as set forth in paragraph (3) of this rule; however, there is no inactive branch office.

(5) The following fees shall be charged for the following purposes:

(a) Change of Individual License to Professional Association or Professional Association to Individual License $30.00

(b) Checks returned due to insufficient funds or account closed:

face value does not exceed $50.00 $25.00

face value exceeds $50.00 but does not exceed $300.00 $30.00

face value exceeds $300.00 (Section 68.065, F.S.) $40.00

or an amount up to 5% of the face amount of the check,

whichever is greater

(c) Late fee $45.00

(6) The license fee for school related categories shall be as follows:

(a) Application for School Instructor $14.75

(b) Effective July 1, 2014, the biennial Permit Fees shall be:

School Permitholder $104.00

Additional Location for Permitholder $45.00

School Instructor $64.00

(7) Entity, sponsor, organization and individual equivalent education course offering:

For each application for approval of education offering $80.00

For each biennial education course offering renewal $80.00

(8) Effective July 1, 2014, the initial application for registration of a corporation, partnership, limited liability company or limited liability partnership is:

Corporation, partnership, limited liability   
company or limited liability partnership $72.00

Branch office for a corporation, partnership,   
limited liability company or limited liability partnership $64.00

(9) Effective July 1, 2014, the biennial renewal of a corporation, partnership, limited liability company or limited liability partnership registration fee shall be:

Corporation, partnership, limited liability   
company or limited liability partnership $72.00

Branch office for a corporation, partnership, limited   
liability company or limited liability partnership $64.00

(10) The fee for request for a change of examination date, which must be in writing, shall be:

(a) Requests received by the examination vendor 3   
or more days prior to the scheduled date no fee

(b) Requests received by the examination vendor   
 less than 3 days prior to the scheduled date $45.00

## 61J2-1.013 Registration Categories.

(1) Registration in the following categories shall show the name, the business address, effective and expiration date:

(a) Active broker partnership;

(b) Active broker corporation;

(c) Active Limited Liability Company;

(d) Active Limited Liability Partnership;

(e) Active Professional Limited Liability Company;

(f) Active Professional Association; and

(g) Branch office.

(2) An active real estate broker may serve in a non-brokerage capacity as an officer or director with a real estate corporation(s) or a partner in a real estate partnership(s) while maintaining an active license(s) with another real estate brokerage firm(s).

## 61J2-1.014 Inactive Renewal.

(1) A voluntarily inactive licensee may elect to renew as inactive every two years by submitting a request to the Department of Business and Professional Regulation (DBPR), satisfying the required continuing education, and submitting the fee established in Rule 61J2-1.011, F.A.C.

(2) A renewal notice will be sent to the licensee’s address of record. If a licensee does not elect to renew, the status automatically shall revert to involuntarily inactive.

(3) An involuntarily inactive licensee may renew by submitting a request to the DBPR, complying with Rule 61J2-3.010, F.A.C., and submitting the current renewal fee in addition to any applicable late fee as established in Rule 61J2-1.011, F.A.C. When the total period of involuntary inactivity exceeds 2 years, the license shall automatically expire per Section 475.183(2), Florida Statutes. Ninety days prior to the expiration, the DBPR shall give notice to the involuntarily inactive licensee.

## 61J2-1.015 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions.

A licensee who is the spouse of a member of the Armed Forces of the United States shall be exempt from all licensure renewal provisions under the Rules of the Commission as long as the member of the Armed Forces of the United States is on active duty and for a period of six months after the member’s discharge from active duty with the Armed Forces, provided that said licensee is not engaged in the practice of real estate brokerage activity in the private sector for profit. This exemption shall only apply in cases of the licensee’s absence from the state because of the member’s duties with the Armed Forces.

## 61J2-1.016 Review of Fees.

(1) No later than the end of September of each year the Commission shall review the fees in Rule 61J2-1.011, F.A.C., to ensure the fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance as required in Section 455.219(1), F.S., and defined in Rule 61-5.002, F.A.C.

(2) If it is determined the fees are not adequate to cover all anticipated costs and to maintain a reasonable cash balance then an increase in the appropriate fee(s) will be proposed or, in the alternative, a one-time fee pursuant to Section 455.219(2), F.S., will be assessed.

(3) If it is determined that there will be an amount in excess of the required reasonable cash balance, then the appropriate decrease in the fee(s) will be proposed.

# CHAPTER 61J2-2 INDIVIDUAL APPLICANT’S EXAMINATION RULES

## 61J2-2.0261 Refund of Applicant and Registration Fees.

Upon written request, refunds of fees will be made under the following circumstances and in the following amounts:

(1) The Commission shall refund to the applicant, or to the applicant’s beneficiary, any portion of the application fee not expended in processing the application. Upon a request for refund, if applicant’s license fee is refunded, applicant’s application shall be considered null and void.

(2) Any fees accepted or collected in error, or in excess of that required, shall be refunded.

(3) In the event a licensee dies prior to the effective date of a renewal period, the full amount of the fee collected for the renewal of licensee’s license shall be refunded to the beneficiary.

## 61J2-2.027 Applications by Individuals.

The application of a natural person for active licensure, whether the applicant expects to operate alone, or as a partner, or with a corporation, or as a sales associate, is governed by substantially the same rules and forms.

(1) The applicant must meet necessary personal qualifications as follows:

(a) Is 18 years of age or older.

(b) If the application is for broker:

1. Has been registered as an active sales associate for at least 24 months during the preceding 5 years under one or more brokers;

2. Has held a current and valid real estate sales associate’s license for at least 24 months during the preceding 5 years in the employ of a governmental agency for a salary and performing the duties authorized in Chapter 475, F.S.; or

3. Has held a current and valid real estate broker’s license for at least 24 months during the preceding 5 years in any other state, territory, or jurisdiction of the United States, or in any foreign national jurisdiction.

(c) Hold a high school diploma or its equivalent.

(2) The applicant must make it possible to immediately begin the inquiry as to whether the applicant is honest, truthful, trustworthy, of good character, and bears a good reputation for fair dealings, and will likely make transactions and conduct negotiations with safety to investors and to those with whom the applicant may undertake a relation of trust and confidence. The applicant is required to disclose:

(a) Whether the applicant has ever been convicted or found quilty of, or entered a guilty plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction or if applicant is currently under criminal investigation;

(b) Whether the applicant has ever done business under any other name, or alias, than the name signed on the application, with sufficient information to enable the Commission to investigate the circumstances;

(c) Whether the applicant has had any license, registration or permit to practice any requested profession, occupation, vocation or business revoked, annulled, suspended, relinquished, surrendered or otherwise disciplined in Florida or in any other jurisdiction or if any such proceeding or investigation is now pending; and

(d) Whether the applicant has had an application for a real estate license denied in Florida or in any other jurisdiction or if there is a pending proceeding to deny such application.

(3) Each applicant must submit digital fingerprint data for processing to determine if the applicant has a criminal history record.

(4) All applicants for permits to instruct or be a permitholder for a real estate school must comply with Sections 475.451(2)(a) and (c), F.S.

## 61J2-2.029 Examination Areas of Competency.

The answers to the Broker, Sales Associate, and Instructor examination shall be graded on the basis of 100 points for a perfect examination. An applicant who receives a grade of 75 points or higher shall be deemed to have successfully completed the licensure examination. The sales associate examination shall be based upon a knowledge, understanding and application of real estate principles and practices, real estate law and real estate mathematics as contained in the Commission prescribed prerequisite education course syllabus for licensure as a real estate sales associate. To the extent these subject areas can reasonably be separated, 45 points shall be based on law, 45 points on principles and practices and 10 points on real estate mathematics. The broker and instructor examinations shall be based upon a knowledge, understanding and application of real estate law, real estate principles and practices including appraising, finance, investment and brokerage management and real estate mathematics. To the extent these subject areas can reasonably be separated, 45 points shall be based on law, 40 points on principles and practices and 15 points on real estate mathematics.

## 61J2-2.030 Notice of Denial.

When an application shall be denied by the Commission, a copy of the order shall be mailed to the applicant by registered or certified mail, or actual service, or constructive service in a manner as provided in Chapter 120, F.S., if service upon the applicant by registered or certified mail, or actual service, is not obtainable, setting forth the reasons for the denial and advising that the applicant has 21 days from date of receipt to request a hearing in accordance with Chapter 120, F.S.

## 61J2-2.031 Where to Apply.

Completed applications for licensure shall be submitted to the Division of Real Estate online or at the address listed on the application.

## 61J2-2.032 Informal Hearings.

When an applicant for licensure as a real estate sales associate or broker requests a Section 120.57(2), F.S., informal hearing before the Commission, in addition to other requirements of law, before the applicant shall be considered for approval to sit for the real estate examination, the applicant must submit at least 3 letters of reference from persons who know of the applicant’s honesty, truthfulness, trustworthiness, good character and good reputation for fair dealing as required in Section 475.17(1)(a), F.S. At least 2 of the letters must be from individuals not related to the applicant.

# CHAPTER 61J2-3 MINIMUM EDUCATIONAL REQUIREMENTS

## 61J2-3.008 Pre-licensing Education for Broker and Sales Associate Applicants.

(1) Any persons desiring to become licensed as a real estate sales associate must satisfactorily complete the Commission-prescribed course designated as Course I. This course will consist of 63 hours of 50 minutes each, inclusive of examination, in the basic fundamentals of real estate principles and practices, basic real estate, and license law. This rule sets forth the course approval criteria and procedure.

(2) (a)Any licensed sales associate desiring to become licensed as a broker must satisfactorily complete the Commission-prescribed course designated as Course II. This course will consist of 72 hours of 50 minutes each, inclusive of examination, in the fundamentals of real estate appraising, investment, financing, and brokerage and management operations.

(b) For all courses approved for classroom delivery, 50 minute hours means fifty minutes of classroom instruction, exclusive of any breaks, recesses, or other time not spent in instruction. Classroom hours are the hours delivered live by an instructor in a classroom or by a live streaming or any means of video conferencing technology while the students are in attendance.

(c) Any school requesting approval for a distance learning course via streaming video or any other means of video conferencing technology must submit to the DBPR at the time of course submission all course materials as well as information on the delivery method and software platform being used.

(3) (a) Accredited universities, colleges, community colleges and area technical centers in this state that offer transferable college credit courses, or real estate schools registered pursuant to Section 475.451, F.S. (“school”), may offer these Commission-prescribed courses. Satisfactory completion of these courses will not entitle any person to receive a license as a real estate broker or sales associate until such person has met all other requirements of law and has passed the applicable Commission-approved state examination which DBPR administers.

(b) The school permit holder, permitted administrative person, or permitted instructor shall, assure necessary equipment performance and administer and certify student and course compliance.

(4) (a) A grade of 70% or higher on the Commission-prescribed end-of-course examination constitutes satisfactory course completion. The school shall administer the examination upon completion of the instruction, provided the student has not missed in excess of 8 hours of classroom instruction.

(b) The school must submit to the Commission the course materials and end-of-course examinations. The school must also submit a copy of the course, and access to the course, in the format in which the course will be offered to the student. Primary schools shall submit pre-license courses for evaluationevery new edition. In no event may a course evaluation submission for renewal be made more than four years after the original approval date. Secondary schools shall resubmit pre-license courses for evaluation prior to every second renewal. A primary school is a school that develops the course material for evaluation under its school name. A secondary school is a school that has been given authority by the primary school to submit the course material for evaluation under its school name. Secondary schools must submit, with the course evaluation, a letter from the primary school authorizing the secondary school to submit the course for evaluation under its school name. When delivered by distance education, the course and examination shall comply with the “Course Approval criteria” as follows:

1. Distance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student’s competency relative to the required subject matter objectives. Distance learning study must be offered on a classroom hour per classroom hour basis.

2. Distance learning means the delivery of education offerings or courses via the internet and/or other interactive electronic media. Such offerings or courses shall be interactive, providing for the interchange of information between the student, and instructor, and shall provide for the registration, evaluation, monitoring, and verification of pre-license education: 50 minute hours for distance learning courses shall be the equivalent of the 50 minute classroom hour in a classroom delivery course.

3. Schools must demonstrate that the credit hours awarded for distance learning are appropriate to the course offered. The schools may accomplish this objective by demonstrating that students engaged in distance learning have acquired the knowledge, skills, and/or competencies that are at least equivalent to those acquired by students enrolled in classroom studies. Pre-licensure courses shall not be offered by correspondence methods, except by reason of a hardship as defined by rule.

a. The school must demonstrate that the technical processes used in the delivery of the course operate correctly and the instructional strategies its use supports.

b. The school must have in place alternative plans for the provision of uninterrupted learner services and technical support in the event of primary system failure.

c. The school must have policies and technical processes in place to verify and document student identity for enrollment, course participation and course completion.

d. Course submissions shall include a detailed course time-line, and the school shall make the timeline available to students prior to enrollment.

e. The school must present evidence by means of an objective study that the stated course hours are consistent with actual hours required to complete the course.

f. The school must describe in detail, the objective method used to insure students receive only the allotted time to complete the end-of-course examinations.

g. The school must demonstrate that permitted instructors and technical staff are available during normal business hours for student assistance. Instructor and technical assistance must be made available to students and posted in a prominent location.

h. Pre-licensing courses must conform to follow the order of the Course I and Course II syllabus. Courses must include learning objective for each session of the syllabus. The course school must describe the method of assessment of the student’s performance periodically throughout the course of instruction.

i. End-of-course examinations shall not include aids such as, but not limited to, hint, back, or retry functionalities. The school must demonstrate that there is a reasonable method in place to prevent duplication of the end-of-course examination. Students shall not take the end-of-course examination without satisfactorily completing all sessions of the syllabus.

j. The school must require the student to submit a statement that includes, “I certify that I personally completed all assignments and have not duplicated any portion of the end-of-course examination prior to the taking of the final examination.”

Thereafter, it is the responsibility of the school offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require, and obtain approval from the Commission at least 60 days before implementing any significant changes to the course during its approval period.

Approval or denial of a Commission-required pre-licensing course (Course I or Course II) will be based on the extent to which the course content covers the material set forth in the appropriate Commission-developed course syllabus, syllabus, effective January 1, 2015 “Sales Associate Course Syllabus (Course I) and effective September 1, 1999 “Broker Course syllabus (Course II)”, incorporated herein by reference and available at and . The institution or school may resubmit a denied course with the mandated changes for reevaluation.

(c) The Commission will approve pre-licensure courses for a period of 24 months and evaluate the course for renewal, provided the school submits theform DBPR RE 2090b, “Request for Course Evaluation.” no more than 120 days prior to the course expiration date. The renewal application must include the course materials, the end-of-course examinations and a summary of what updates and revisions have been made to the course. A school may grade an examination within 15 days after the expiration date of the course, provided it receives the materials prior to or on the date of expiration. Schools shall notify students of course number and expiration date upon enrollment.

(d) The school shall develop at least 2 forms of the end-of-course examination, and submit them for approval as provided in paragraph (4)(b) above. No end-of-course examination shall contain more than 15% duplication of questions.Examinations must test the course material. The answer key must be unique for each form of the examination. The answer key must reference the page number(s) containing the information upon which each question and correct answer is based. At least 70% of the questions on each form of the test shall be application oriented. Application level means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information. No more than 10% of the questions on each form of the test shall be at the knowledge level. Knowledge level means the recall of specific facts, patterns, methods, terms, rules, dates, formulas, names, or other information that should be committed to memory. A school offering the Commission-prescribed courses must maintain a sufficient bank of questions to assure examination validity. The sales associate end-of-course examinations shall contain at least 100 items, or 2 items per instruction hour. The broker end-of-course examinations shall contain at least 95 items, of which 5 items are 2 points each, which shall cover closing statements or escrow accounts, or 2 items per instruction hour. All Questions shall be multiple-choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content and the item must not refer the student to the course material. The overall time to complete the end-of-course examination must not exceed the equivalent of 1.8 minutes per item.

(5) (a) The school offering these Commission-prescribed courses shall inform each student of the standards and requirements at the commencement of each course. Notice of course completion shall comply with Rule 61J2-3.015, F.A.C.

(b) In all Commission-approved courses by distance education, the school and permitholder shall provide to students an address, email address and telephone number of a permitted instructor registered with such school, who shall be available to assist the students with instruction. The school shall communicate to all students the times in which the permitted instructor will be available to assist the students with instruction.

(6) Students failing the Commission-prescribed end-of-course examination must wait at least 30 days from the date of the original examination to retest. Within one year of the original examination, a student may retest a maximum of one time. Otherwise, students failing the end-of-course examination must repeat the course prior to being eligible to take the end-of-course examination again. Schools shall administer a different form of the end-of-course examination to a student that is retaking the exam or repeating the course.

(7) Make-up classes and examinations to enable a student to take the end-of-course examination due to student or family illness may not extend more than 30 days beyond the scheduled class examination without approval from the Commission. Make-up classes must consist of the original course materials that the student missed.

(8) Any active member in good standing with The Florida Bar who is otherwise qualified under the real estate license law is exempt from the Commission-prescribed prerequisite education course for licensure as a real estate sales associate.

(9) Any applicant for licensure who has received a 4-year degree or higher in real estate from an accredited institution of higher education is exempt from the Commission-prescribed prerequisite education courses for licensure.

## 61J2-3.009 Continuing Education for Active and Inactive Broker and Sales Associate Licensees.

(1) (a) All persons holding active or inactive licenses as brokers or sales associates must satisfactorily complete a minimum of 14 hours of instruction of 50 minutes each as the Commission has prescribed or approved during each license renewal period excluding the first renewal period of their current license.

(b) For all courses approved for classroom delivery, 50 minute hours means fifty minutes of classroom instruction, exclusive of any breaks, recesses, or other time not spent in instruction. Classroom hours are the hours delivered live by an instructor in a classroom or by live streaming or any means of video conferencing technology while students are in attendance at permitted or approved school locations.

(c) Any school or provider requesting approval for a distance learning course via streaming video or any other means of video conferencing technology must submit to the DBPR at the time of course submission all course materials as well as information on the delivery method and software platform being used.

(d) Distance learning means the delivery of education offerings or courses by correspondence or via the internet and/or other interactive electronic media. Such offerings or courses shall be interactive, providing for the interchange of information between the student and instructor, and shall provide for the registration, evaluation, and monitoring of students.

(e) 50 minute hours for distance learning courses shall be the equivalent of the 50 minute classroom hour in a classroom delivery course.

(f) The Commission shall approve any specialty course, seminar or conference in the real estate practice area provided by a public or private school, firm, association, organization, person, corporation, sponsor or provider. “Specialty” courses on real estate practices shall be approved for no less than 2 hours and for not more than 8 hours of instruction of 50 minutes each. Courses shall not be approved for fractional hours. The Commission will approve the course for 24 months. Approval or denial of a “specialty” course will be based on its compliance with the criteria established in Section 475.182(1), F.S.

(g) A school or provider must submit the course materials and end-of-course examinations to the Commission for evaluation at least 60 days prior to use and receive approval before it may offer the course, The school or provider must also submit a copy of the continuing education course, and access to the course, in the format in which the course will be offered to the student.Thereafter, it is the responsibility of the school or provider offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require.

(h) All Core Law continuing education courses shall be resubmitted for evaluation prior to every second renewal. Classroom and distance education courses may be submitted for renewal no more than 120 days prior to the course expiration date.

(i) If a school or provider develops a new version of course materials or new end-of-course examinations during the approval period, the end-of-course examinations and a summary of the changes must be submitted to the Commission at least 60 days prior to use and receive approval before it may offer the course.

(2) (a) The Commission-prescribed Core Law course totaling 3 hours of instruction of 50 minutes each will review and update licensees on Florida real estate license law, Commission rules, and agency law, and provide an introduction to other state laws, federal laws, and taxes affecting real estate. Approval or denial of the Commission-required Core Law course will be based on the extent to which the course content covers the above-referenced subject areas. The Commission-prescribed Ethics and Business Practices course totaling 3 hours of instruction of 50 minutes each will cover general business ethics applicable to any business and/or real estate. Examinations, if required, must test the course material. If course approval is denied, the institution or school may resubmit the course, with the mandated changes for re-evaluation.

(b) Licensees must take the 3-hour Core Law course once during each renewal period. A licensee who takes the 3-hour Core Law course in each year of the renewal period shall be allowed a total of 3 hours of Core Law education and 3 hours of specialty education toward the 14hour requirement. Beginning October 1, 2017, licensees must also take the 3-hour Ethics and Business Practices course once during each licensure renewal period. Licensees who complete the Core Law course and Ethics and Business Practices course will receive 6 hours credit toward the 14 hour requirement. the “specialty” course hours must total at least 8 hours.

(3) Successfully meeting standards established for each Commission-prescribed course constitutes satisfactory completion of the Commission-prescribed continuing education course or courses. A provider shall issue notice of satisfactory classroom course completion only to a licensee attending a minimum of 90% of each of the classroom hours ofCommission-prescribed course instruction. Notice of course completion shall be as per Rule 61J2-3.015, F.A.C.

(4) (a) A grade of 80% or higher on the Commission-prescribed continuing education course or courses examination constitutes satisfactory course completion. Students failing the Commission-prescribed course examination must repeat the course of study prior to being eligible to retake the course examination, which must be a different examination from the one the student previously failed. No examination shall contain more than 20% duplication of questions.

(b) A copy of the distance education course materials and a copy of each form of the end-of-course examinations that will be distributed to students shall be submitted to the Commission for evaluation and approval at least 60 days prior to use. Examinations must test the course material. The provider must submit the course materials and a minimum of five end-of-course examinations for each course to the Commission for evaluation and approval at least 60 days prior to its use. Thereafter, it is the responsibility of the provider offering the Commission-approved courses to keep the course material current and accurate. If the Commission does not approve the course, the provider may resubmit the course, with the mandated changes for re-evaluation. If a provider develops a new version of course materials or new end-of-course examinations during the approval period, the end-of-course examinations and a summary of the changes must be submitted to the Commission at least 60 days prior to use and receive approval before it may offer the course.

(c) The objective of the distance education course of study end-of-course examination is to test fairly and reliably whether students have learned essential facts and concepts from the course. The examination shall consist of a minimum of 30 items or, if delivered in smaller modules, the examination shall consist of a minimum of 10 items for courses of 5 hours or less. For courses greater than 5 hours, but less than 14 hours, the examination shall consist of a minimum of 2 items per instruction hour. All questions shall be multiple choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content. The answer key must be unique for each form of the examination. The answer key must reference the page number(s) containing the information on which each question and correct answer is based. At least 70% of the questions on each form of the test shall be at the application level or higher. No more than 10% of the questions on each form of the test shall be at the knowledge level. The answer key must be unique for each form of the examination. Any school offering the Commission-prescribed continuing education course of study by distance education must maintain a sufficient bank of questions to assure examination validity when administering the examination to licensees from a common source such as a specific business, firm or family.

1. Application level means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information.

2. Knowledge level means recalling specific facts, patterns, methods, terms, rules, dates, formulas, names, or other information that must be committed to memory.

(d) In all Commission-approved continuing education courses by distance education, the real estate school and school permitholder shall provide to students an address and telephone number of a permitted instructor registered with such school to answer inquiries. The school shall post the schedule of the instructor’s availability.

(e) A provider may grade an examination within 15 days after the expiration date of the course, provided it receives the materials prior to or on date of expiration. Providers shall notify students of course number and expiration date upon receipt of course materials.

(5) Accredited universities, colleges and community colleges in this state, area technical centers, approved providers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed or approved specialty courses. Accredited universities, colleges and community colleges in this state, area technical centers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed Core Law course. Satisfactory completion of these courses will not entitle any person to renew a license as a real estate broker or sales associate until such person has met all requirements of law.

(6) Any active member in good standing with The Florida Bar and who is otherwise qualified under the real estate license law is exempt from the continuing education requirements of this rule.

(7) An instructor who teaches a Commission-approved continuing education course may use the course towards the satisfactory completion of the sales associate or broker continuing education requirement on a classroom-hour for classroom-hour basis. However, an instructor may not claim the course more than once in a renewal cycle.

## 61J2-3.010 License Reactivation Education for Brokers and Sales Associates.

(1) Brokers and sales associates holding an involuntarily inactive license may only maintain this status for 2 years. The first day of this allowable 2-year period is the first day the broker or sales associate failed to hold a valid and current active or voluntarily inactive license. After the second year, the broker’s or sales associate’s right to request an active or voluntarily inactive license automatically expires, by operation of law.

(2) A licensee may reactivate a license that has been involuntarily inactive for more than 12 months but less than 24 months by satisfactorily completing 28 hours of a Commission-prescribed education course derived from the Florida Real Estate Commission Salesperson Course Syllabus (FREC Course I). The course shall contain coverage of the following topics: Real Estate License Law and Qualifications for Licensure (Session 2); Real Estate License Law and Commission Rules (Session 3); Authorized Relationships, Duties and Disclosure (Session 4); Real Estate Brokerage Activities and Procedures (Session 5); Violations of License Law, Penalties and Procedures (Session 6); Federal and State Laws Pertaining to Real Estate (Session 7); Real Estate Contracts (Session 11); Real Estate Related Computations and Closing of Transactions (Session 14); and Real Estate Investments and Business Opportunity Brokerage (Session 17).

(3) Students failing the Commission-prescribed end-of-course examination may retest a maximum of one time Within one year of the original examination. Otherwise, students failing the Commission-prescribed end-of-course examination must repeat the course prior to being eligible to again take the end-of-course examination. Schools shall administer a different form of the end-of-course examination to a student who is retaking the exam or repeating the course.

(a) For all courses approved for classroom delivery, 50 minute hours means fifty minutes of classsroom instruction, exclusive of any breaks, recesses, or other time not spent in instruction. Classroom hours are the hours delivered live by an instructor in a classroom or by live streaming or any means of video conferencing technology while the students are in attendance at permitted or approved school locations.

(b) Any school requesting approval for a distance learning course via streaming video or any other means of video conferencing technology must submit to the DBPR at the time of course submission all course materials as well as information on the delivery method and software platform being used.

(c) When delivered by distance education, the course and examinaton shall comply with the “Course Approval criteria” as follows:

1. Distance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student’s competency relative to the required subject matter objectives. Distance learning study must be offered on a classroom hour per classroom hour basis.

2. Distance learning means the delivery of education offerings or courses via the internet and/or other interactive electronic media. Such offerings or courses shall be interactive, providing for the interchange of information between the student and instructor, and shall provide for the registration, evaluation, and monitoring of students. 50 minute hours for distance learning courses shall be the equivalent of the 50 minute classroom hour in a classroom delivery course.

(4) A licensee may demonstrate satisfactory completion for reactivation by achieving a grade of 70% or higher on the Commission-prescribed end-of-course examination. The end-of-course examination shall contain 2 items per instructional hour or a minimum of 50 questions. The school must develop at least two forms of the end-of-course examination and submit them to the Department for approval. All courses shall conform to the requirements of Rule 61J2-3.008, F.A.C. The school shall test only students who have completed at least 90% of the required hours of instruction.

(5) The school offering these Commission-prescribed courses shall inform each student of the standards and requirements at the commencement of each course and issue a notice of course completion as prescribed by the Commission in Rule 61J2-3.015, F.A.C.

(6) Accredited universities, colleges, community colleges in this state, area technical centers or real estate schools registered pursuant to Section 475.451, F.S., may offer the Commission-prescribed courses. Satisfactory completion of these courses will not entitle any person to reactivate an involuntary inactive license as a real estate broker or sales associate until such person has met all other requirements of law.

(7) The Commission will allow an additional 6-month period after the expiration of a license for brokers and sales associates who cannot complete the reactivation requirements due to individual hardship. Individual hardship is defined in Rule 61J2-3.013, F.A.C.

(a) Any licensee requesting a hardship shall make the request to the Commission in writing setting forth the basis of the alledged hardship. The Commission may require said request to be supported by additional documentation.

(b) Any licensee who has received a hardship extension will remain null and void until a valid reinstatement application for is received with proof of renewal fees and reactivation education.

## 61J2-3.011 Continuing Education for School Instructors.

(1) Any person holding “school instructor” permits shall recertify competency during each permit period by satisfactorily completing 7 classroom or distance learning hours of instruction and/or instructional techniques as prescribed and conducted by the Commission. A school instructor is not required to complete the 7 hours of recertification education as a condition for initial permit renewal if the time between the effective date on the initial permit as an instructor and the beginning of the initial renewal permit is less than 12 months. Of the required 7 classroom or distance learning hours, up to 3 hours may be applied toward the continuing education core law requirement for licensure pursuant to Rule 61J2-3.009, F.A.C.

(2) Satisfactory completion of these courses will not entitle any person to renew a permit as a school instructor until such person has met all other requirements of law.

(3) The continuing education requirements for school instructors do not apply with respect to any attorney who is otherwise qualified under the provisions of Section 475.451, F.S.

## 61J2-3.012 Equivalency for Prelicensing Education.

(1) Any person who has attended an accredited college, university, community college, area technical center or a real estate school licensed in Florida pursuant to Section 475.451, F.S., and who, while attending said institutions or real estate school, satisfactorily completed real estate courses covering substantially the same subject matter, classroom hours of attendance, and completion standards as prescribed by the Commission in Rule 61J2-3.008, F.A.C., shall be deemed to have satisfactorily completed the course.

(2) Any person who has obtained a 4-year degree with a major in real estate from an accredited institution of higher education which substantially covers the Commission prescribed course subject matter at such college or university shall also be deemed to have satisfactorily completed the course. Application for equivalency evaluation shall be accompanied by an official transcript from the college or university or by appropriate certificate issued by a real estate school registered in Florida pursuant to Section 475.451, F.S., showing the real estate subjects taken together with date completed and grade attained. The Commission may request supportive documentation to determine course equivalency.

## 61J2-3.013 Hardship Cases.

(1) A physical hardship case pertaining to post licensing education includes:

(a) a licensee’s long term illness or an illness involving a close relative or person for whom the licensee has care-giving responsibilities;

(b) the required course is not reasonably available; or

(c) the licensee has an economic or technological hardship that substantially relates to the ability to complete education requirements.

(2) An illness or economic hardship case pertaining to reactivation education includes:

(a) A licensee’s long term illness or an illness involving a close relative or person for whom the licensee has care-giving responsibilities;

(b) The required course is not reasonably available; or

(c) The licensee has an economic or technological hardship that substantially relates to the ability to complete education requirements.

(3) An economic hardship is defined as the inabililty to meet reasonable basic living expenses.

(4) Any person requesting such hardship as cited above shall make a request to the Commission in writing, setting forth the basis of the alleged hardship. The Commission may require said request to be supported by additional documentation.

## 61J2-3.015 Notices of Satisfactory Course Completion.

(1) Applicants for initial licensure as a broker or sales associate must provide the course completion report at the individual’s scheduled examination as proof that they have satisfactorily completed the applicable Commission prescribed course.

(2) An application for renewal or reactivation of an existing status as a broker, broker-sales associate, sales associate or instructor shall contain an affirmation by the individual of having satisfactorily completed the applicable Commission prescribed, conducted or approved course(s). Each licensee and instructor permitholder shall retain the course completion report as proof of successful completion of continuing education or post-license education requirements for at least 2 years following the end of the renewal period for which the education is claimed. Failing to provide evidence of compliance with continuing education or post-license education requirements or the furnishing of false or misleading information regarding compliance with said requirements shall be grounds for disciplinary action against the licensee or instructor.

(3) Commission approved equivalent courses offered by accredited Florida universities, colleges, community colleges and area technical centers shall provide students with the applicable course completion report (notice) described below. The course completion report for these equivalent courses must contain the college equivalent course identifying number.

(4) All requests for equivalency for credit courses taken at universities, colleges and community colleges outside of Florida must be accompanied by an official transcript. An official transcript contains the seal of the institution and the signature of the registrar.

(5) The course completion report must be typed or printed in ink and must be completely filled out by the institution, school or sponsor certifying successful course completion.

(6) The course completion reports shall contain the following information for the type of course being completed.

(a) Pre-licensing Course for Sales Associate.

Name of School

Address of School

Course Title: Course I

Start Date

Finish Date

Exam Date

Last 5 digits of Social Security Number

Student Name

Student Address

Authorized Signature for the School

(b) Pre-licensing Course for Broker.

Name of School

Address of School

Course Title: Course II

Start Date

Finish Date

Exam Date

Sales Associate License Number

Last 5 digits of Social Security Number

Student Name

Student Address

Authorized Signature for the School

(c) Broker and Sales Associate Continuing Education and Reactivation Education.

Name of School

Address of School

Course Title

Course Hours

Start Date

Finish Date

License Number

Student Name

Student Address

Authorized Signature for the School

(d) Post-licensing Education for Broker and Sales Associate.

Name of School

Address of School

Course Title

Course Hours

Start Date

Finish Date

License Number

Student Name

Student Address

Authorized Signature for the School

(e) Instructor Continuing Education.

Name of School

Address of School

Course Title

Course Hours

Start Date

Finish Date

Permit Number

Student Name

Student Address

Authorized Signature for the School

(f) Each course completion report shall contain the following information:

The student named in this report has completed the referenced course in accordance with the requirements of the Florida Real Estate Commission. The original course completion report is to be given to the student and a copy retained by the school.

## 61J2-3.020 Post-licensing Education for Active and Inactive Broker and Sales Associate Licensees.

(1) All applicants for licensure who pass a broker or sales associate licensure examination must satisfactorily complete a Commission-prescribed post-licensing course prior to the first renewal following initial licensure. The licensee must take the post-licensing course or courses at an accredited university, college, community college, area technical center in this state, real estate school registered, pursuant to Section 475.451, F.S., or Commission-approved sponsor (“provider”).

(a) For a licensed sales associate, the post-licensing education requirement shall consist of one or more Commission-approved courses which shall not exceed 45 hours of 50 minutes each, inclusive of examination, in subjects as provided for in Section 475.17(3)(a), F.S. Post-licensing courses shall consist of a minimum of 15 hours of instruction of 50 minutes each.

(b) For a broker, the post-licensing education requirement shall consist of one or more Commission-approved courses which shall not exceed 60 hours of 50 minutes each, inclusive of examination, in subjects as provided for in Section 475.17(3)(a), F.S.

(2) Post-licensing education courses shall be training oriented, to the maximum extent possible, and shall build on the academic body of knowledge acquired during the pre-licensing education courses. All courses shall emphasize development of skills necessary for licensees to operate effectively and provide increased protection to the public.

(3) The provider must submit two complete copies of the course materials and end-of-course examination; one submission must be blind. The provider must also submit a copy of the course, or access to the course, in the format in which the student will use it. The course and examination, when delivered via distance education, shall comply with the “Course Approval Criteria” as follows:

(a) Distance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed-exams and similar assignments, designed to measure the student’s competency relative to the required subject matter objectives. Distance learning study must be offered on a classroom-hour for classroom-hour basis.

(b) Providers must demonstrate that the credit hours awarded for distance learning are appropriate to the course offered. The provider may accomplish this objective by demonstrating that students engaged in distance learning have acquired the knowledge, skills, and/or competencies that are at least equivalent to those acquired by students enrolled in classroom studies.

1. The provider must demonstrate that the technical processes used in the delivery of the course operate correctly and the instructional strategies its use supports.

2. The provider must have in place alternative plans for the provision of uninterrupted learner services and technical support in the event of primary system failure.

3. The provider must have policies and technical processes in place to verify and document student identity for enrollment, course participation and course completion.

4. Course submissions shall include a detailed course time-line, and the provider shall make the time-line available to students prior to enrollment.

5. The provider must present evidence by means of an objective study that the stated course hours are consistent with actual hours required to complete the course.

6. The provider must describe in detail, the objective method used to ensure students receive only the allotted time to complete the end-of-course examinations.

7. The provider must demonstrate that instructors and technical staff are available to assist students with instruction. Instructor and technical assistance hours must be made available to students and posted in a prominent location.

8. Post-licensing courses must include learning objectives for each session of the syllabus. The course provider must describe the method of assessment of the student’s performance periodically throughout the course of instruction.

9. End-of-course examinations shall not include aids such as, but not limited to, hint, back, or retry functionalities. The provider must demonstrate that there is a reasonable method in place to prevent duplication of the end-of-course examination. Students shall not take the end-of-course examination without satisfactorily completing all sessions of the syllabus.

10. The provider must require the student to submit a statement that includes “I certify that I personally completed all assignments and have not duplicated any portion of the end-of-course examination” prior to the taking of the final examination.

Thereafter, it is the responsibility of the provider offering the Commission-approved courses to keep the course materials current and accurate, as changing times and laws require, and obtain approval from the Commission at least 60 days before implementing any significant changes to the course during its approval period. If the Commission does not approve the course, the provider may resubmit a denied course, with the mandated changes for re-evaluation.

(4) A grade of 75% or higher on the Commission-prescribed end-of-course examination constitutes satisfactory course completion. The provider shall develop at least 2 unique forms of the end-of-course examinations and submit them for approval with a detailed course syllabus. The answer key must be unique for each form of the examination and reference the page number(s) containing the information on which each question and correct answer is based. Examinations must test the material. At least 70% of the questions on each form of the test shall be application oriented. Application level means the ability to use the learned material in a completely new and concrete situation. It usually involves the application of rules, policies, methods, computations, laws, theories, or any other relevant and available information. No more than 10% of the questions on each form of the test shall be at the knowledge level. Knowledge level means the recall of specific facts, patterns, methods, terms, rules, dates, formulas, names or other information that should be committed to memory. A provider offering the Commission-prescribed courses must maintain a sufficient bank of questions to assure examination validity. End-of-course examinations shall contain at least 100 items. A course that is thirty-hours or less shall contain a minimum of 50 items. All questions shall be multiple choice with 4 answer choices each. The order of the examination questions may not follow the sequence of the course content. The overall time to complete the end-of-course examination must not exceed the equivalent of 1.8 minutes per item.

(5) The Commission shall approve post-licensure courses for a period of 24 months and consider renewals only if the provider submits the renewal application no later than 90 days prior to the course expiration date. A provider may grade an examination within 15 days after the expiration of the course, provided it receives the materials prior to or on date of expiration.

(6) The provider shall administer the examination and issue a notice of satisfactory completion, as per Rule 61J2-3.015, F.A.C., provided the student has not missed in excess of 10% of the instruction and has passed the end-of-course examination with a grade of 75% or higher.

(7) The provider offering these Commission-prescribed or approved courses shall inform each student of the standards and requirements at the commencement of each course. Notice of course completion shall comply with Rule 61J2-3.015, F.A.C. In all Commission-approved courses offered by distance education, the provider or permitholder shall provide to students an address, e-mail address and telephone number of a Commission-approved instructor registered with such provider, who shall be available to assist the students with instruction. Instructor and technical assistance hours must be made available to students and posted in a prominent location.

(8) (a) Students failing a Commission-prescribed end-of-course examination must wait at least 30 days from the date of the original examination to retest. Within one year of the original examination, a student may retest a maximum of one time. Otherwise, students failing the Commission-prescribed end-of-course examination must repeat the course prior to being eligible to again take the end-of-course examination. Providers shall administer a different form of the end-of-course examination to a student that is retaking the exam or repeating the course.

(b) Make-up classes and examinations to enable a student to take the prescribed end-of-course examination due to student or family illness may not extend more than 30 days beyond the class scheduled end-of-course examination date without Commission approval. Make-up classes must consist of the original course materials which the student missed.

(9) The Commission will allow an additional 6-month period after the first renewal following initial licensure for brokers and sales associates that cannot, due to individual physical hardship, complete the course or courses within the required time. Individual physical hardship is defined as a case wherein a person desiring to take the Commission-prescribed courses cannot, by reason of a physical hardship, attend the place where the classes are conducted. Any person desiring to complete the education course by means of distance education shall make a request to the Commission in writing, setting forth the basis of the alleged hardship. The Commission shall require said request to be supported by statements of doctors and other persons having knowledge of the facts.

# CHAPTER 61J2-4 PARTNERSHIP

## 61J2-4.007 Registration Requirements.

Every partnership shall be registered and at least one of its partners licensed or registered as an active broker. Each partner who expects to deal with the public in the partnership’s practice or business as a broker shall hold a valid and current active broker’s license or registration.

## 61J2-4.009 Incorporation by Reference.

All of the provisions and requirements of Rules 61J2-5.014 through Rule 61J2-5.018 shall apply to partnerships and its partners so far as they may be made applicable by reading into them “partnership” for “corporation” and “partners” for “officers” or “directors.”

## 61J2-4.010 Successor Partnerships.

Ordinarily when a partner dies or withdraws, or a new partner is added, that partnership is dissolved and a new one is created. For Commission purposes, if the business is continued by two or more persons, one of whom is an active broker with the partnership, the partnership will be deemed to be continued. In this latter case, it is only necessary to cancel, issue, or reissue registration and licenses, perfecting the changes in organization, including change of name of the partnership, if any, and including a reissue of licenses to each sales associate if there is a change of name or address. If there is dispute between two former partners, or groups thereof, as to the right to use a trade name or firm name, no registration or licenses shall be issued to either until the dispute is settled by agreement or judicially and the registration and licenses of all, as well as the sales associate(s), shall be involuntary inactive until the dispute is so settled, or a request shall be filed for the issuance of registration and licenses under another name.

# CHAPTER 61J2-5 CORPORATIONS

## 61J2-5.012 Domestic Corporations.

Before initial registration is granted, proof must be furnished of legal corporate existence. Before renewal registration is granted, the Commission may require proof of legal corporate existence. Proof may be by letter from the Secretary of State or by certification.

## 61J2-5.013 Foreign Corporation.

Before registration is granted or, if demanded, renewal registration is issued to a foreign corporation, and licenses to its active officers and directors, proof shall be filed that the corporation is authorized to do business in the State of Florida. A letter from the Secretary of State shall be deemed to be sufficient proof.

## 61J2-5.014 Registration of Corporation.

Unless the Commission or BPR shall have information that the corporation has been in violation of Chapters 475 and 455, Florida Statutes, or the rules promulgated under said chapters, it will be assumed to be qualified for registration if its officers and directors are qualified and if the answers to questions in the application, or in supplemental inquiries, are satisfactory. Otherwise, investigation and other proceedings, as in cases of individual applicants, shall commence. No registration shall be granted or renewed for any corporation if it shall appear that the individual(s) having control of the corporation has been denied, revoked, or suspended and not reinstated, or if a person having control of the corporation has been convicted of a felony in any court and has not had civil rights restored for at least 5 years, or if an injunction has been entered against the individual for operating as a real estate licensee without a license. A person shall be deemed to be in control of a corporation where such person or spouse, children, or member of the household shall own or control, directly or indirectly, more than 40 percent of the voting stock of such corporation.

## 61J2-5.015 License Status of Officers and Directors Required.

All officers and directors of a real estate brokerage corporation, domestic or foreign, shall be registered. No registration shall be issued to the corporation or licenses to any officer or director, unless the corporation shall cause to register, and biennially renew the license of at least one active officer. A foreign corporation shall biennially present proof that at least one active officer, holding a valid and current active license, or for whom such a license is requested, is authorized to transact brokerage business in the State of Florida, and to bind the corporation with respect to such business.

## 61J2-5.016 License Status of Active Officers and Directors.

Officers and directors who expect to be active must qualify and become licensed in the same manner and procedure as any other applicant for active license. No registration shall be issued to the corporation or partnership unless every broker licensed with the corporation or partnership is registered as an officer, director or partner of the corporation or partnership. No sales associate or broker associate may be registered as an officer, director of a brokerage corporation or general partner of a brokerage partnership.

## 61J2-5.017 Registration of Inactive Officers and Directors.

Individual applications for renewal shall not be required of inactive officers and directors of a corporation. Registration shall be maintained upon the representations contained in the application or request for renewal by the corporation.

## 61J2-5.018 Vacancies of Office.

(1) A brokerage shall have at all times registered the name(s) of its officer(s) and director(s). In the event that a brokerage has but one active broker, and such broker dies, resigns, or is unexpectedly unable to remain in the position as the active broker, then, in such event, such vacancy shall be filled within 14 calendar days during which no new brokerage business may be performed by the brokerage or a licensee registered with the brokerage until a new active or temporary broker is appointed and registered with the brokerage. It shall be the duty of the brokerage to immediately notify the Commission of such vacancy and of the steps taken to fill this vacancy.

(2) Failure to appoint another active or temporary broker within 14 calendar days will result in the automatic cancellation of the brokerage registration, and the licenses of all its broker associates and sales associates will become inactive.

(3) If a brokerage has more than one active broker and one such broker dies, resigns, or is unexpectedly unable to remain in the position as an active broker, neither the brokerage registration nor the licenses of any of its broker associates and sales associates are affected by this vacancy.

(4) If a brokerage has only one active broker and that broker dies, resigns or is unexpectedly unable to remain in the position as active broker, the vacancy may be filled with a temporary broker. A temporary broker may be registered with a brokerage for a period not to exceed 60 days without the need to comply with the Secretary of State registration requirements of Rule 61J2-5.012, F.A.C. Such registration shall be on a form as prescribed by the department with supporting documentation as prescribed by the form. No later than 60 days after the registration of the temporary broker, such brokerage shall file proof that a new broker is properly registered with the Secretary of State on a form prescribed by the department.

(5) For purposes of qualifying for a temporary broker license, a broker’s failure to complete post-licensure education is not an unexpected vacancy.

(6) If an active broker officer or director resigns or is unexpectedly unable to remain in the broker’s corporate office, the broker may have a license reissued individually or with a partnership or another corporation. If an active broker officer or director is already licensed as active when the broker takes the corporate office, the broker shall surrender the current license within 7 calendar days, and apply for issuance or reissuance of a license in the corporate capacity. However, surrender of the broker’s current license is not required if the broker holds multiple licenses.

## 61J2-5.019 Responsibility for Registration Status.

(1) It shall be the duty of every active corporate officer and director to see that the corporation and each of its officers, directors and salespersons are holders of current registration and licenses. It shall be the duty of every active broker partner of a partnership to see that each partner of a partnership required to hold registration and license does in fact hold registration and license.

(2) No corporate registration or license of any of its officers, directors, and salespersons shall be valid unless and until such corporation has an active broker other than as provided in Rule 61J2-5.018, F.A.C.

(3) The registration of such partnership shall be cancelled automatically during that period of time that at least one partner is not the holder of a current and valid active broker's license.

## 61J2-5.020 Execution of Papers by Corporation.

All applications, requests, changes of address and employment for salespersons, or other papers and documents required of corporations, shall be signed in the name of the corporation, by an active broker officer or director. Whenever multiple licenses are requested by a broker and one or more of the licenses are under partnerships or corporations, a statement of disclosure shall be signed by a partner of the partnership, or officer of the corporation, other than the applicant for the license. If more than one person connected with a partnership or corporation requests multiple licenses in other capacities, the statement of disclosure may not be signed by one for the other, but by a majority of the remaining directors or partners.

# CHAPTER 61J2-6 SALESPERSONS

## 61J2-6.006 Employment by More Than One Entity.

(1) A salesperson or broker-salesperson may only be employed by one broker or by one owner-developer. Owner-developers shall be defined as any of those unlicensed entities enumerated in s. 475.011(2), F.S.

(2) One owner-developer may produce proof that various properties are owned in the name of various entities, but all such entities are so connected, subsidiary, interlocking or affiliated, so that such ownership or control, for practical purposes, is substantially in the same individual or individuals, in which case a salesperson or broker-salesperson may have a group license. Each entity shall execute the certificate attached to the request for a group license.

# CHAPTER 61J2-9 REISSUANCE OF CERTIFICATE

## 61J2-9.007 Change of Name.

If a name or trade name is lawfully changed, a request for the reissuance of the license or registration shall be filed, and the license or registration shall be reissued.

# CHAPTER 61J2-10 OPERATION, BUSINESS AND OFFICES

## 61J2-10.022 Office.

The required office, pursuant to Section 475.22(1), F.S., may be in a residential location, if not contrary to local zoning ordinances, provided the minimum office requirements are met and the required broker’s sign is properly displayed, pursuant to Section 475.22(1), F.S. Sales associates must be registered from and work out of an office maintained and registered in the name of the employer.

## 61J2-10.023 Branch Office.

(1) If a broker desires to conduct business from more than one office, each additional office must be registered as a branch office, and the fee must be paid for its registration, as provided in subsection 61J2-1.011(3), F.A.C.

(2) A mere temporary shelter, on a subdivision being sold by the broker, for the protection of salespersons and customers and at which transactions are not closed and salespersons are not permanently assigned, is not deemed to be a branch office. The permanence, use, and character of activities customarily conducted at the office or shelter shall determine whether it must be registered.

(3) If a broker closes a branch office and, at about the same time, establishes another at a different location, the registration of the office which was closed may not be transferred. Such new location is a new branch office which must be registered and the fee paid as though the other had not been closed. Upon application to the BPR, the broker may reopen the first office at any time during the license period without payment of an additional fee.

## 61J2-10.025 Advertising.

(1) All advertising must be in a manner in which reasonable persons would know they are dealing with a real estate licensee. All real estate advertisements must include the licensed name of the brokerage firm. No real estate advertisement placed or caused to be placed by a licensee shall be fraudulent, false, deceptive or misleading.

(2) When the licensee’s personal name appears in the advertisement, at the very least the licensee’s last name must be used in the manner in which it is registered with the Commission.

(3) (a) When advertising on a site on the Internet, the brokerage firm name as required in subsection (1) above shall be placed adjacent to or immediately above or below the point of contact information. “Point of contact information” refers to any means by which to contact the brokerage firm or individual licensee including mailing address(es), physical street address(es), e-mail address(es), telephone number(s) or facsimile telephone number(s).

(b) The remaining requirements of subsections (1) and (2) apply to advertising on a site on the Internet.

## 61J2-10.027 Use of Association Names.

No licensee shall use an identification or designation of any association or organization having to do with real estate unless entitled to use such identification or designation.

## 61J2-10.028 Kickbacks or Rebates.

(1) Any real estate licensee who receives, or makes any arrangement or agreement to receive, directly or indirectly, any kickback or rebate, for the placement of, or favor in, any business transaction which forms a part of, or is incident to, any transaction(s) negotiated or handled by said licensee, is a violation of Section 475.25(1)(b) or (d), F.S., or both of said subsections of the F.S., unless prior to the time of the placement of, or favor in, said business transaction, the licensee shall have fully advised the principal if any and all affected parties in the transaction(s), which the licensee is handling, of all facts pertaining to the arrangement of kickbacks or rebates.

(2) The sharing of brokerage compensation by a licensee with a party to the real estate transaction with full disclosure to all interested parties is not considered a violation of Chapter 475, Part I, F.S.

## 61J2-10.030 Rental Information.

(1) Each broker or sales associate who furnishes a rental information list to a prospective tenant for a fee paid by the tenant shall provide such prospective tenant with a written contract or receipt agreement containing the following provision in type size 10 point bold or larger:

NOTICE

PURSUANT TO FLORIDA LAW:

If the rental information provided under this contract is not current or accurate in any material aspect, you may demand within 30 days of this contract date a return of your full fee paid. If you do not obtain a rental you are entitled to receive a return of 75% of the fee paid, if you make demand within 30 days of this contract date.

(2) Each contract or receipt agreement shall be contained on one side of one page not larger than 8 1/2 × 11 inches. The type size of the balance of the terms of the contract shall be in a size not smaller than 8 point type.

Each licensee shall furnish to the BPR a copy of the current contract or receipt agreement within 30 days of use of such agreement.

## 61J2-10.031 Time for Payment of Administrative Fines and Costs.

In cases where the Commission imposes an administrative fine and costs, if any, for violation of Chapters 455 and 475, F.S., or the rules promulgated thereunder, the fine and costs shall be paid within 30 days of the filing of the final order unless directed otherwise by the Commission.

## 61J2-10.032 Notice Requirements.

(1) (a) A real estate broker, upon receiving conflicting demands for any trust funds being maintained in the broker’s escrow account, must provide written notification to the Commission within 15 business days of the last party’s demand and the broker must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after the last demand.

(b) A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker’s escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission.

(c) If one of the parties to a failed real estate sales transaction does not respond to the broker’s inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. This notice should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party.

(2) (a) If the broker has instituted a settlement procedure other than a request for an Escrow Disbursement Order, the broker shall provide written notification to the Commission within 30 business days of the receipt of the last demand or good faith doubt of the procedure instituted to resolve the matter.

(b) If the broker has requested an Escrow Disbursement Order and the broker is notified in writing that no Escrow Disbursement Order will be issued, then the broker shall institute another settlement procedure and so notify the Commission within 30 business days after the broker’s receipt of such notification.

(c) If the broker has requested an Escrow Disbursement Order and the dispute is subsequently settled or goes to court before the Order is issued, the broker shall notify the Commission within 10 business days of such event.

(3) For purposes of this rule, where a broker is required to provide written notification within a certain period, the effective date of that notification is deemed to be the date of the postmark or other dispatch of notification. A request for an Escrow Disbursement Order as a settlement procedure is deemed instituted when the completed request form is mailed or otherwise dispatched to the Commission.

(4) Brokers who are entrusted with an earnest money deposit (EMD), pursuant to a residential sales contract utilized by the Department of Housing and Urban Development (HUD) in the sale of property owned by HUD, are not required to follow the notice or settlement procedures of Section 475.25(1)(d)1., F.S., and subsection (1) of this rule. The broker is to follow HUD’s Agreement to Abide, Broker Participation Requirements, and 24 C.F.R. s. 291.135 as they pertain to the proper disposition of EMDs.

## 61J2-10.034 Trade Names.

An individual broker, partnership or corporation may use a trade name and, if so, it must be disclosed upon the request for license, and be placed upon the registration or license. The trade name shall not be, and the Commission will refuse to issue a license containing a trade name which is the same as the real or trade name of another registrant or licensee registered or licensed with the Commission. No individual, partnership or corporation may be registered under more than one trade name. The actual name of the individual or an entity is not a trade name.

## 61J2-10.038 Mailing Address.

(1) Pursuant to Section 455.275(1), F.S., the Commission defines “current mailing address” as the current residential address which is used by a licensee or permit holder to receive mail through the United States Postal Service.

(2) Each licensee and permit holder is required to notify the BPR in writing of the current mailing address and any change in the current mailing address within 10 days after the change.

# CHAPTER 61J2-14 FUNDS ENTRUSTED TO BROKERS ‒ DEPOSITS AND ESCROWS

## 61J2-14.008 Definitions.

(1) (a) A “deposit” is a sum of money, or its equivalent, delivered to a real estate licensee, as earnest money, or a payment, or a part payment, in connection with any real estate transaction named or described in Section 475.01(1)(a), F.S., or for the purpose of obtaining satisfaction, release, or assignment of mortgages, or quit claim or other deeds deemed necessary or desirable in acquiring or perfecting the title to real estate, or assembling interest therein, or such sum delivered in escrow, trust or on condition, in connection with any transaction conducted, or being conducted, by such licensee within the scope of Chapter 475, F.S.

(b) A deposit, as so defined, shall extend to and include not only cash, or currency, but any medium of exchange, or any securities to be converted into money, delivered for any of the purposes aforesaid, to be held or converted into cash or bank credits. A broker shall not be responsible for the payment of any check or draft, unless the broker, through culpable negligence, fails to deposit the same in the regular course of business, and the check or draft is not paid due to such culpable negligence, and damage results to some party entitled to complain of said culpable negligence.

(2) (a) “Trust” or “escrow” account means an account in a bank or trust company, title company having trust powers, credit union, or a savings and loan association within the State of Florida. Only funds described in this rule shall be deposited in trust or escrow accounts. No personal funds of any licensee shall be deposited or intermingled with any funds being held in escrow, trust or on condition except as provided in subsection 61J2-14.010(2), F.A.C.

(b) When a deposit is placed or to be placed with a title company or an attorney, the licensee who prepared or presented the sales contract (“Licensee”), shall indicate on that contract the name, address, and telephone number of such title company or attorney. Within ten (10) business days after each deposit is due under the sales contract, the Licensee’s broker shall make written request to the title company or attorney to provide written verification of receipt of the deposit, unless the deposit is held by a title company or by an attorney nominated in writing by a seller or seller’s agent. Within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit, the Licensee’s broker shall provide Seller’s broker with either a copy of the written verification, or, if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit. If Seller is not represented by a broker, then Licensee’s broker shall notify the Seller directly in the same manner indicated herein.

(3) “Immediately” means the placement of a deposit in an escrow account no later than the end of the third business day following receipt of the item to be deposited. Saturdays, Sundays and legal holidays shall not be considered as business days.

## 61J2-14.009 Real Estate Sales Associate.

Every sales associate who receives any deposit, as defined in Rule 61J2-14.008, F.A.C., shall deliver the same to the broker or employer no later than the end of the next business day following receipt of the item to be deposited. Saturday, Sundays and legal holidays shall not be construed as business days. Receipt by a sales associate or any other representative of the brokerage firm constitutes receipt by the broker for purposes of paragraph 61J2-14.008(3), F.A.C.

## 61J2-14.010 Real Estate Broker.

(1) Every broker who receives from sales associates, principals, prospects, or other persons interested in any real estate transaction, any deposit, fund, money, check, draft, personal property, or item of value shall immediately place the same in a bank, savings and loan association, trust company, credit union or title company having trust powers, in an insured escrow or trust account. The broker must be a signatory on all escrow accounts. If the brokerage entity has more than one broker licensee, then one broker licensee may be designated as the signatory. If the deposit is in securities, intended by the depositor to be converted into cash, the conversion shall be made at the earliest practical time, and the proceeds shall be immediately deposited in said account.

(2) A broker may place and maintain up to $1,000 of personal or brokerage funds per each sales escrow account. A broker may place and maintain up to $5,000 of personal or brokerage funds per each property management escrow account. Personal or brokerage funds in any escrow account shall not exceed $5,000 per account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. For purposes of this subsection, reasonable amount of time shall be defined as 30 days from the date the last reconciliation statement was performed or should have been performed.

## 61J2-14.011 Rights of Broker in Deposits.

A broker who receives a deposit shall not have any right to or lien upon said deposit, except upon the written agreement or order of the depositor so long as the depositor or depositor’s legal representative has sole control of said deposit, until the transaction involved has been closed, and no person has any claim except the party ultimately to receive the same, in which case the broker may deduct the agreed commission unless the amount or time of payment is disputed. In case of a dispute as to the amount of the commission, or the time of payment, the broker may retain only the amount of the claim in said account and in trust, until the dispute is settled by agreement, arbitration, mediation or court proceedings, as provided in Section 475.25(1)(d)1., F.S. A depositor has the right to demand return of a deposit until such time as another party has acquired some interest or equity, subject to the right to make an express agreement to compensate the broker for time and expense incurred prior to a demand for the return of the deposit; and such right to demand return of the deposit shall again accrue upon a breach by the other party to the contract or agreement under which it is held, or the expiration of the time fixed or a reasonable time, for performance of the things necessary to establish the exclusive right of such other party to said deposit. A broker shall not deliver the deposit to the other party to the transaction until such transaction is closed, except as otherwise directed or agreed to specifically by the depositor. The interested parties involved, other than the broker, may by express agreement, alter the disposal of the deposit, but the burden shall be on the broker to establish good faith in the matter if such agreement is to the broker’s advantage. The broker shall recognize and comply with the joint directions of said parties in such cases, except where the parties act in bad faith with intent to deprive the broker of a commission, in which case the broker shall proceed as provided in Section 475.25(1)(d)1., F.S.

## 61J2-14.012 Broker’s Records.

(1) A broker who receives a deposit as previously defined shall preserve and make available to the BPR, or its authorized representative, all deposit slips and statements of account rendered by the depository in which said deposit is placed, together with all agreements between the parties to the transaction. In addition, the broker shall keep an accurate account of each deposit transaction and each separate bank account wherein such funds have been deposited. All such books and accounts shall be subject to inspection by the DBPR or its authorized representatives at all reasonable times during regular business hours.

(2) Once monthly, a broker shall cause to be made a written statement comparing the broker’s total liability with the reconciled bank balance(s) of all trust accounts. The broker’s trust liability is defined as the sum total of all deposits received, pending and being held by the broker at any point in time. The minimum information to be included in the monthly statement-reconciliation shall be the date the reconciliation was undertaken, the date used to reconcile the balances, the name of the bank(s), the name(s) of the account(s), the account number(s), the account balance(s) and date(s), deposits in transit, outstanding checks identified by date and check number, an itemized list of the broker’s trust liability, and any other items necessary to reconcile the bank account balance(s) with the balance per the broker’s checkbook(s) and other trust account books and records disclosing the date of receipt and the source of the funds. The broker shall review, sign and date the monthly statement-reconciliation.

(3) Whenever the trust liability and the bank balances do not agree, the reconciliation shall contain a description or explanation for the difference(s) and any corrective action taken in reference to shortages or overages of funds in the account(s). Whenever a trust bank account record reflects a service charge or fee for a non-sufficient check being returned or whenever an account has a negative balance, the reconciliation shall disclose the cause(s) of the returned check or negative balance and the corrective action taken.

## 61J2-14.014 Interest-Bearing Escrow Accounts.

(1) A broker is allowed to place escrow funds in an interest-bearing account. The placement of escrow monies in an interest-bearing account, designation of the party who is to receive the interest, and the time the earned interest must be disbursed, must be done with the written permission of all the parties to the transaction. Said escrow account must be in an insured account in a depository located and doing business in Florida.

(2) In order to disburse principal and interest to the designated party at the time agreed, the broker must first transfer said principal and interest to a non-interest-bearing escrow account before disbursement. In the event the broker is designated by all parties to receive the interest, only the principal is to be transferred to the non-interest-bearing escrow account for further disbursement. The interest is to be transferred directly to the broker’s operating account.

(3) As an alternative to subsection (2) above, the broker may establish an individual interest-bearing escrow account for a specific transaction or sum of money. On the date agreed upon for disbursement of the principal and interest, the broker shall close the account with checks issued to the appropriate person(s) or business entity(ies) for the principal and interest.

# CHAPTER 61J2-17 REAL ESTATE SCHOOL ADMINISTRATIVE PROCEDURES AND REGULATIONS

## 61J2-17.009 Minimum Standard for Prelicense Course of Study.

A permit shall be issued to a real estate school when the course of study to be offered is designed to enable or assist individuals to pass a licensure examination administered by the BPR and that: (1) covers the material contained in the applicable Commission prescribed course; (2) consists of not less than 15 hours of classroom, or individual instruction; and (3) is not comprised solely of a study of questions and answers.

## 61J2-17.011 School Instructor Requirements and Qualifications.

A person shall qualify for an instructor’s permit by meeting the qualifications for practice set forth in Section 475.451(2)(c), Florida Statutes. “Extensive real estate experience” shall be defined as a minimum of three years of full-time experience as a broker. This experience must include having participated in closing at least five real estate transactions as a licensee, or as the employing broker of licensees, for either party to the transaction, within the 12-month period immediately preceding the filing of an instructor's application.

## 61J2-17.013 Interpretation of Particular Phrases.

Whenever used, the phrases set forth shall be construed as follows:

(1) “To guarantee that its pupils will pass any examinations given by the department” as prohibited by Section 475.451(3), Florida Statutes, and shall be construed to include, but without limitation, any representation, agreement, promise or understanding whereby a person enrolled in any school or course is to receive any refund of money or other thing of value if such person should fail the examination offered by the Division.

(2) “Each person, school, or institution” used in Section 475.451(1), Florida Statutes, is construed to include only one address or location; and a person, school or institution, offering or conducting a course at more than one address or location, must obtain a permit for each address or location.

## 61J2-17.014 Guest Lecturers.

Guest lecturers may be used by a real estate school offering Commission prescribed or approved equivalent courses so long as:

(1) Guest lecturers provide no more than 20% of the total course;

(2) Guest lecturers have prior written approval of the Commission; and

(3) An instructor licensed with such school is available on the premises.

## 61J2-17.015 Required Communication by School Permit Holders.

No real estate school, permit holder or instructor shall recruit for employment opportunities for any real estate brokerage firm during classroom instructional time. Each school permit holder must post in every classroom and administrative area, and read at the beginning of each course, the following statement: “Recruiting for employment opportunities for any real estate brokerage firm must be accomplished outside the prescribed classroom instructional time. Noncompliance should be reported to the Commission.”

## 61J2-17.016 Renewal of Instructor Permits.

(1) An instructor permit shall be renewed on a biennial basis. The schedule for biennial renewal shall be as established in Rule 61-6.001, F.A.C.

(2) Any permit which is not renewed at the end of the permit period established in Rule 61-6.001, F.A.C., shall automatically revert to involuntarily inactive status pursuant to Section 475.451(2)(c)3., F.S.

(3) An involuntarily inactive instructor permit holder must complete the following in order to obtain an active permit:

(a) Successfully complete the continuing education requirements of Rule 61J2-3.011, F.A.C.

(b) File a renewal application.

(c) Pay the required fee pursuant to paragraph 61J2-1.011(6)(b), F.A.C.

(d) Pay the late fee pursuant to paragraph 61J2-1.011(5)(c), F.A.C.

(4) Any permit which has been involuntarily inactive for 2 years shall automatically expire pursuant to Section 475.183(2), Florida Statutes. Once a permit expires, it becomes null and void without any further action by the Commission or Department of Business and Professional Regulation.

# CHAPTER 61J2-20 RULES GOVERNING INTERNAL ORGANIZATION AND OPERATION

## 61J2-20.009 Probable Cause Panel.

A probable cause panel shall determine if probable cause exists that a licensee, registrant, a permit holder, or the subject of the investigation violated Chapter 475, Part I, F.S., or any of the Commission’s rules. A probable cause panel shall consist of at least one present member of the Commission. As provided in Section 455.225(4), F.S., one of the panel members may be a former member of the Commission.

## 61J2-20.040 Membership.

(1) The Florida Real Estate Commission, created by Chapter 475, Part I, F.S., is a regulatory agency and performs its functions pursuant to Chapter 475, Part I, F.S., and such other functions as may be delegated by law. The Commission's membership as set forth in Chapter 475, Part I, F.S., shall consist of 7 members who shall elect from the members a chairperson and vice chairperson.

(2) Three consecutive unexcused absences or absences constituting 50 percent or more of the Commission’s meetings within any 12-month period shall cause the membership in question to become void, and the position shall be considered vacant. An unexcused absence is one where no advance notice of an absence is given to the chairperson, vice chairperson or Director of the Division or, if there is advance notice of an absence, no explanation of the absence is given.

## 61J2-20.048 Principal Office.

The principal office of the Commission shall be located at 400 West Robinson Street, Orlando, Florida 32801-1757. The Commission may also be contacted through the Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-0796.

## 61J2-20.049 Commission Member Compensation.

Unless otherwise provided by law, a Commission member shall be compensated $50.00 for each day in attendance at an official meeting of the Commission, including Probable Cause Panel Meetings, and for each day the member participates in any other business involving the Commission. “Other business involving the Commission” shall be defined as:

(1) Attendance at instructors' seminars sponsored by the Commission.

(2) Appearances before a legislative committee, upon direction of the chairperson of the Commission or the chairperson of the Committee.

(3) Attendance at a meeting with the staff or contractors of the BPR at the request of the Secretary of the BPR or the Division Director.

(4) Attendance at a conference or trade association meeting in the capacity of a member of the Commission.

(5) Attendance at the Florida Association of Realtor’s Legislative Days in Tallahassee in the capacity of a member of the Commission regarding legislation being promoted by the Commission.

## 61J2-20.051 Authorized Signatures on Final Orders.

A Final Order of the Commission may be signed by either the chairperson or vice chairperson of the Commission or the Division Director. Serving on a probable cause panel does not preclude the chairperson or the vice chairperson from signing a Final Order of the Commission.

## 61J2-20.052 Designation of Official Reporter.

(1) The Commission designates the Department of Business and Professional Regulation (BPR) as its official reporter for the purpose of publishing and indexing by subject matter, after a proceeding has been held, all orders rendered which affect substantial interests.

(2) The BPR maintains and stores such orders in the offices of the agency clerk at the Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-0796. The agency clerk’s office is open to the public between the hours of 9:00 a.m. and 4:00 p.m., excluding holidays and weekends. For further information regarding the indexing of orders by the BPR, refer to Rule Chapter 61-14, F.A.C.

## 61J2-20.054 Public Comment.

The Florida Real Estate Commission invites and encourages all members of the public to provide comment on matters or propositions before the Commission or a committee of the Commission. The opportunity to provide comment shall be subject to the following:

(1) Members of the public will be given an opportunity to provide comment on subject matters before the Commission after an agenda item is introduced at a properly noticed Commission meeting.

(2) Members of the public shall be limited to three (3) minutes to provide comment. This time shall not include time spent by the presenter responding to questions posed by Commission members, staff or Commission counsel. The chair of the Commission may extend the time to provide comment if time permits.

(3) Members of the public shall notify Commission staff in writing of their interest to be heard on a proposition or matter before the Commission. The notification shall identify the person or entity, indicate its support, opposition, or neutrality, and identify who will speak on behalf of a group or faction of persons.

# CHAPTER 61J2-23 TIME-SHARE SALES

## 61J2-23.001 Time-share Resale Listing Agreement Disclosures.

Pursuant to Section 475.42(1)(m), F.S., it shall be a violation of Chapter 475, F.S., for any broker or salesperson to enter into any agreement with any person engaging the services of the broker in connection with the resale of a time-share period unless the agreement complies in all respects with the following provisions.

(1) In addition to all other requirements of and obligations under Chapter 475, F.S., all agreements engaging the services of a broker in connection with the resale of a time-share period shall contain all of the following:

(a) The following statement in conspicuous type located immediately prior to the space in the agreement reserved for the signature of the owner of the time-share period: THERE IS NO GUARANTEE THAT YOUR TIME-SHARE PERIOD CAN BE SOLD AT ANY PARTICULAR PRICE OR WITHIN ANY PARTICULAR PERIOD OF TIME. Any written advertising material utilized by a broker or salesperson in connection with the solicitation of a listing agreement for the resale of a time-share period must also contain this statement in conspicuous type.

(b) A complete and clear disclosure of any fees, commissions, and other costs or compensation payable to or received by the broker under the agreement, whether directly or indirectly.

(c) The term of the agreement; a statement regarding the ability of any party to extend the term of the agreement; and a description of the conditions under which the agreement may be extended and all related costs.

(d) A description of the services to be provided by the broker under the agreement, and a description of the obligations of each party regarding a resale purchase, including any costs to be borne and any obligations regarding notification of the managing entity of the time-share plan and any exchange company.

(e) A statement disclosing whether the agreement grants exclusive rights to the broker to locate a purchaser during the term of the agreement; a statement disclosing to whom and when any proceeds from a sale of the time-share period will be disbursed; a statement whether any party may terminate the agreement and under what conditions; and a statement disclosing the amount of any commission or other compensation due to the broker from any party upon a termination of the agreement prior to the closing of the resale.

(f) A statement disclosing whether the agreement permits the broker or any other person to make any use whatsoever of the time-share period in question and a detailed description of any such permitted use rights, including a disclosure of to whom any rents or profits generated from such use of the time-share period will be paid.

(g) A statement disclosing the existence of any judgments or pending litigation against the broker resulting from or alleging a violation by the broker of Chapters 475, 498, 718 or 721, F.S., or resulting from or alleging consumer fraud on the part of the broker.

(2) All agreements described in subsection (1) must be reduced to writing, and the person engaging the services of the broker must receive a fully executed copy of the written agreement on the day he signs it. If the agreement is initially entered into by telephone or by any other oral means, the broker must make all of the disclosures required by subsection (1) to the person engaging his services prior to accepting anything of value from such person. In any event, a written agreement executed by the broker must be presented for signature to the person engaging his services within 10 days after the date the agreement was initially orally entered into.

## 61J2-23.002 Time-share Resale Contract Disclosures.

Pursuant to Section 475.42(1)(m), Florida Statutes, it shall be a violation of Chapter 475, Florida Statutes, for any broker or salesperson to utilize any form of contract or purchase and sale agreement in connection with the resale of a time-share period unless the contract or purchase and sale agreement complies in all respects with the following provisions.

(1) All forms of contract or purchase and sale agreement utilized by a broker or salesperson in connection with the resale of a time-share period shall contain all of the following:

(a) An explanation of the form of time-share ownership being purchased and a legally sufficient description of the time-share period being purchased.

(b) The name and address of the managing entity of the time-share plan.

(c) The following statement in at least 10-point, capitalized type located immediately prior to the space in the contract reserved for the signature of the purchaser: THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES ALLOCABLE TO THE TIME-SHARE PERIOD YOU ARE PURCHASING IS \_\_\_. THIS ASSESSMENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY THE MANAGING ENTITY OF THE TIME-SHARE PLAN, IS PAYABLE IN FULL EACH YEAR ON OR BEFORE \_\_\_. THIS ASSESSMENT (INCLUDES/DOES NOT INCLUDE) YEARLY AD VALOREM REAL ESTATE TAXES, WHICH (ARE/ARE NOT) BILLED AND COLLECTED SEPARATELY. (If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be included: THE MOST RECENT ANNUAL ASSESSMENT FOR AD VALOREM REAL ESTATE TAXES FOR THE TIME-SHARE PERIOD YOU ARE PURCHASING IS \_\_\_.) EACH OWNER IS PERSONALLY LIABLE FOR THE PAYMENT OF HIS ASSESSMENTS FOR COMMON EXPENSES, AND FAILURE TO TIMELY PAY THESE ASSESSMENTS MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS. In making the disclosures required by this paragraph, the broker may rely upon information provided in writing by the managing entity of the time-share plan.

(d) The disclosure required by Section 721.06(1)(h), Florida Statutes, if applicable.

(e) A complete and accurate disclosure of the terms and conditions of the purchase and closing, including the obligations of the seller and/or the purchaser for closing costs and title insurance.

(f) A statement disclosing the existence of any mandatory exchange program membership included in the time-share plan.

# CHAPTER 61J2-24 DISCIPLINARY MATTERS

## 61J2-24.001 Disciplinary Guidelines.

(1) Pursuant to Section 455.2273, F.S., the Commission sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon licensees guilty of violating Chapter 455 or 475, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which normally will be imposed for each count during a formal or an informal hearing. For purposes of this rule, the order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial. Pursuant to Section 475.25(1), F.S., combinations of these penalties are permissible by law. Nothing in this rule shall preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Probable Cause Panel from issuing a letter of guidance.

(2) As provided in Section 475.25(1), F.S., the Commission may, in addition to other disciplinary penalties, place a licensee on probation. The placement of the licensee on probation shall be for such a period of time and subject to such conditions as the Commission may specify. Standard probationary conditions may include, but are not limited to, requiring the licensee: to attend pre-licensure courses; to satisfactorily complete a pre-licensure course; to attend post-licensure courses; to satisfactorily complete a post-licensure course; to attend continuing education courses; to submit to and successfully complete the state-administered examination; to be subject to periodic inspections and interviews by a DBPR investigator; if a broker, to place the license on a broker associate status; or, if a broker, to file escrow account status reports with the Commission or with a DBPR investigator at such intervals as may be prescribed.

(3) The penalties are as listed unless aggravating or mitigating circumstances apply pursuant to subsection (4). The verbal identification of offenses is descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

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| --- | --- | --- |
|  | **PENALTY RANGE** |  |
| **VIOLATION** | **FIRST VIOLATION** | **SECOND AND SUBSEQUENT**  **VIOLATIONS** |
|  |  |  |
| (a) Section 475.22, F.S.  Broker fails to maintain office or sign at  entrance of office | (a) Reprimand to $500 administrative fine | (a) 90-day suspension and $1,000  administrative fine |
|  |  |  |
| (b) Section 475.24, F.S.  Failure to register a branch office | (b) Reprimand to $500 administrative fine | (b) 90-day suspension and $1,000  administrative fine |
|  |  |  |
| (c) Section 475.25(1)(b), F.S. Fraud,  misrepresentation, and dishonest dealing  Concealment, false promises, false pretenses by trick, scheme or device  Culpable negligence or breach of trust  Violating a duty imposed by law or by the  terms of a listing agreement; aided, assisted  or conspired with another; or formed an intent,  design or scheme to engage in such misconduct  and committed an overt act in furtherance of  such intent, design or scheme | (c) $1,000 to $2,500 administrative fine and  30-day suspension to revocation  $1,000 to $2,500 administrative fine and 30-  day suspension to revocation  $1,000 to $2,500 administrative fine and 30-  day suspension to revocation  $1,000 to $2,500 administrative fine and 30-  day suspension to revocation | (c) $2,500 to $5,000 administrative fine and 6 month suspension to revocation  $2,500 to $5,000 administrative fine and 6 month suspension to revocation  $2,500 to $5,000 administrative fine and 6 month suspension to revocation  $2,500 to $5,000 administrative fine and 6 month suspension to revocation  $2,500 to $5,000 administrative fine and 6 month suspension to revocation |
|  |  |  |
| (d) Section 475.25(1)(c), F.S.  False, deceptive or misleading advertising | (d) $250 to $1,000 administrative fine and 30  to 90 day suspension | (d) $1,000 to $5,000 administrative fine and 90 day suspension to revocation |
|  |  |  |
| (e) Section 475.25(1)(d), F.S.  Failed to account or deliver to any person  as required by agreement or law, escrowed  property | (e) $250 to $1,000 administrative fine and  suspension to revocation | (e) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (f) Section 475.25(1)(e), F.S.  Violated any rule or order or provision under  Chapters 475 and 455, F.S. | (f) $250 to $1,000 administrative fine and  suspension to revocation | (f) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (g) Section 475.25(1)(f), F.S.  Convicted or found guilty of a crime related  to real estate or involving moral turpitude  or fraudulent or dishonest dealing | (g) $250 to $1,000 administrative fine and 30-  day suspension to revocation | (g) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (h) Section 475.25(1)(g), F.S.  Has license disciplined or acted against or  an application denied by another jurisdiction | (h) $250 to $1,000 administrative fine and 30-  day suspension to revocation | (h) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (i) Section 475.25(1)(h), F.S.  Has shared a commission with or paid a fee  to a person not properly licensed under Chapter  475, F.S. | (i) $250 to $1,000 administrative fine and 30  day suspension to revocation | (i) $1,000 to $5,000 administrative fine and suspension to revocation |
| (j) Section 475.25(1)(i), F.S.  Impairment by drunkenness, or use of drugs or  temporary mental derangement | (j) Suspension for the period of incapacity | (j) Suspension for the period of incapacity |
|  |  |  |
| (k) Section 475.25(1)(j), F.S.  Rendered an opinion that the title to property  sold is good or merchantable when not based  on opinion of a licensed attorney or has failed  to advise prospective buyer to consult an  attorney on the merchantability of title or to  obtain title insurance | (k) $250 to $1,000 administrative fine and 30  day suspension to revocation | (k) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (l) Section 475.25(l)(k), F.S.  Has failed, if a broker, to deposit any money in  an escrow account immediately upon receipt  until disbursement is properly authorized. Has  failed, if a sales associate, to place any money  to be escrowed with his registered employer | (l) $250 to $1,000 administrative fine and 30-  day suspension to revocation | (l) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (m) Section 475.25(1)(l), F.S.  Has made or filed a report or record which the  licensee knows to be false or willfully failed to  file a report or record or willfully impeded such  filing as required by State or Federal Law | (m) $250 to $1,000 administrative fine and 30  day suspension to revocation | (m) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (n) Section 475.25(1)(m), F.S.  Obtained a license by fraud, misrepresentation  or concealment | (n) $250 to $1,000 administrative fine and 30-  day suspension to revocation | (n) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (o) Section 475.25(1)(n), F.S. Confined in jail,  prison or mental institution; or through mental  disease can no longer practice with skill and  safety | (o) $250 to $1,000 administrative fine and  suspension to revocation | (o) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (p) Section 475.25(1)(o), F.S.  Guilty for the second time of misconduct in  the practice of real estate that demonstrates  incompetent, dishonest or negligent dealings  with investors | (p) $1,000 to $5,000 administrative fine and a  1 year suspension to revocation |  |
|  |  |  |
| (q) Section 475.25(1)(p), F.S.  Failed to give Commission 30 day written  notice after a guilty or nolo contendere plea or  convicted of any felony | (q) $500 to $1,000 administrative fine and  suspension to revocation | (q) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (r) Section 475.25(1)(r), F.S.  Failed to follow the requirements of a written  listing agreement | (r) $250 to $1,000 administrative fine and  suspension to revocation | (r) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (s) Section 475.25(1)(s), F.S.  Has had a registration suspended, revoked  or otherwise acted against in any jurisdiction | (s) $250 to $1,000 administrative fine and  60-day suspension to revocation | (s) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (t) Section 475.25(1)(t), F.S.  Violated the Uniform Standards  of Professional Appraisal Practice as defined  in Section 475.611, F.S. | (t) $250 to $1,000 administrative fine and  30-day suspension to revocation | (t) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (u) Section 475.25(1)(u), F.S.  Has failed, if a broker, to direct, control,  or manage a broker associate or sales associate  employed by such broker | (u) $250 to $1,000 administrative fine and  suspension to revocation | (u) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (v) Section 475.25(1)(v), F.S.  Has failed, if a broker, to review the  brokerage’s trust accounting procedures in  order to ensure compliance with this chapter | (v) $250 to $2,500 administrative fine and  suspension to revocation | (v) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (w) Section 475.42(1)(a), F.S.  Practice without a valid and current license | (w) $250 to $2,500 administrative fine and  suspension to revocation | (w) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (x) Section 475.42(1)(b), F.S.  Practicing beyond scope as a sales associate | (x) $250 to $1,000 administrative fine and  suspension to revocation | (x) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (y) Section 475.42(1)(c), F.S.  Broker employs a sales associate who is not  the holder of a valid and current license | (y) $250 to $1,000 administrative fine  and suspension to revocation | (y) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (z) Section 475.42(1)(d), F.S.  A sales associate shall not collect any money  in connection with any real estate brokerage  transaction except in the name of the employer | (z) $250 to $1,000 administrative fine and  suspension to revocation | (z) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (aa) Section 475.42(1)(f), F.S.  Makes false affidavit or affirmation or  false testimony before the Commission | (aa) $250 to $1,000 administrative fine  and suspension to revocation | (aa) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (bb) Section 475.42(1)(g), F.S.  Fails to comply with subpoena | (bb) $250 to $1,000 administrative fine  and suspension | (bb) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (cc) Section 475.42(1)(h), F.S.  Obstructs or hinders the enforcement  of Chapter 475, F.S. | (cc) $250 to $1,000 administrative fine  and suspension to revocation | (cc) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (dd) Section 475.42(1)(i), F.S.  No broker or sales associate shall place  upon the public records any false, void  or unauthorized information that affects  the title or encumbers any real property | (dd) $250 to $2,500 administrative fine  and suspension to revocation | (dd) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (ee) Section 475.42(1)(j), F.S.  Failed to register trade name with  the Commission | (ee) $250 to $1,000 administrative fine | (ee) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (ff) Section 475.42(1)(k), F.S.  No person shall knowingly conceal  information relating to violations of  Chapter 475, F.S. | (ff) $250 to $1,000 administrative fine  and suspension | (ff) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (gg) Section 475.42(1)(l), F.S.  Fails to have a current license as a broker  or sales associate while listing or selling one  or more timeshare periods per year | (gg) $250 to $1,000 administrative fine  and suspension | (gg) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (hh) Section 475.42(1)(m), F.S.  Licensee fails to disclose all material aspects  of the resale of timeshare period or timeshare  plan and the rights and obligations of  both buyer or seller | (hh) $250 to $1,000 administrative fine and  suspension | (hh) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (ii) Section 475.42(1)(n), F.S.  Publication of false or misleading  information; promotion of sales, leases  and rentals | (ii) $250 to $1,000 administrative fine  and suspension to revocation | (ii) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (jj) Section 475.451, F.S.  School teaching real estate practice fails  to obtain a permit from the department  and does not abide by regulations of Chapter  475, F.S., and rules adopted by  the Commission | (jj) $250 to $1,000 administrative fine  and suspension | (jj) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (kk) Section 475.453, F.S.  Broker or sales associate participates in  any rental information transaction that fails  to follow the guidelines adopted by  the Commission and Chapter 475, F.S. | (kk) $250 to $1,000 administrative fine and  suspension | (kk) $1,000 to $5,000 administrative fine and 90-day suspension to revocation |
|  |  |  |
| (ll) Section 475.5015, F.S.  Failure to keep and make available to  the department such books, accounts,  and records as will enable the department  to determine whether the broker is  in compliance with the provisions of Chapter 475, F.S. | (ll) $250 to $1,000 administrative fine  and suspension to revocation | (ll) $1,000 to $5,000 administrative fine and 90-day suspension to revocation |
|  |  |  |
| (mm) Section 455.227(1)(s), F.S.  Failing to comply with the educational  course requirements for domestic violence | (mm) $250 to $1,000 administrative fine and  suspension to revocation | (mm) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (nn) Section 455.227(1)(t), F.S.  Failing to report in writing to the  Commission within 30 days after the  licensee is convicted or found guilty of,  or entered a plea of nolo contendere or  guilty to, regardless of adjudication, a crime  in any jurisdiction. | (nn) $250 to $1,000 administrative fine  and suspension to revocation | (nn) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |
| (oo) Section 455.227(1)(u), F.S.  Termination from a treatment program  for impaired practitioners as described  in Section 456.076 for failure to comply,  without good cause, with the terms of  the monitoring or treatment contract  entered into by the licensee or failing  to successfully complete a drug or  alcohol treatment program | (oo) $250 to $1,000 administrative fine and  suspension to revocation | (oo) $1,000 to $5,000 administrative fine and suspension to revocation |
|  |  |  |

(4) (a) When either the Petitioner or Respondent is able to demonstrate aggravating or mitigating circumstances to the Commission in a Section 120.57(2), F.S., hearing or to a Division of Administrative Hearings hearing officer in a Section 120.57(1), F.S., hearing by clear and convincing evidence, the Commission or hearing officer shall be entitled to deviate from the above guidelines in imposing or recommending discipline, respectively, upon a licensee.

Whenever the Petitioner or Respondent intends to introduce such evidence to the Commission in a Section 120.57(2), F.S., hearing, advance notice of no less than seven (7) days shall be given to the other party or else the evidence can be properly excluded by the Commission.

(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:

1. The degree of harm to the consumer or public.

2. The number of counts in the Administrative Complaint.

3. The disciplinary history of the licensee.

4. The status of the licensee at the time the offense was committed.

5. The degree of financial hardship incurred by a licensee as a result of the imposition of a fine or suspension of the license.

6. Violation of the provision of Chapter 475, F.S., wherein a letter of guidance as provided in Section 455.225(4), F.S., previously has been issued to the licensee.

## 61J2-24.002 Citation Authority.

(1) Pursuant to Section 455.224, F.S., the Commission sets forth violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a violation for which there is no substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the fine or other conditions to be imposed.

(2) The following violations with accompanying fine or other conditions may be disposed of by citation:

|  |  |
| --- | --- |
| VIOLATION | FINE |
|  |  |
| (a) Section 475.180(2)(a), F.S. – a nonresident failed to file the required irrevocable consent form; a resident licensee who failed to notify the Commission of becoming a nonresident as prescribed | $300.00 |
| (b) Sections 475.17(2)(a), 475.17(3)(a), 475.17(4)(a), F.S., Rule 61J2-3.008 and 61J2-3.009, F.A.C. failed to provide the required number of classroom hours for an approved or prescribed course | $500.00 |
| (c) Section 475.175(2), F.S. and Rule 61J2-3.015, F.A.C. – failed to provide a course completion report to a student | $100.00 |
| (d) Section 475.22(1), F.S. and Rule 61J2-10.022, F.A.C. – failed to maintain the required office as prescribed | $500.00 |
| (e) Section 475.22(1), F.S. – failed to maintain the required office entrance sign | $100.00 |
| (f) Section 475.22(2), F.S. – failed to register an out of state Florida broker’s office | $500.00 |
| (g) Section 475.24, F.S., and 61J2-10.023, F.A.C. – failed to register a location as a branch office | $200.00 |
| (h) Section 475.25(1)(k), F.S. and subsection 61J2-14.010(1), F.A.C. – failed to immediately deposit trust funds provided the deposit is not more than 3 days late | $200.00 |

|  |  |
| --- | --- |
| (i) Section 475.25(1)(q), F.S. – failed to give the appropriate disclosure or notice at the appropriate time under the provisions of Section 475.2755 or 475.278, F.S. (A citation may only be given for a first time violation.) | $300.00 |
| (j) Section 475.25(1)(r), F.S. – failed to include the required information in a listing agreement; failed to give a copy to a principal within 24 hours; contains a self renewal clause | $200.00 |
| (k) Section 475.42(1)(b), F.S. – sales associate operating as a sales associate without a registered employer due to failure to renew or properly register | $500.00 |
| (l) Section 475.42(1)(i), F.S. – having a lis pendens placed by an attorney (Citation may be issued only if no other violation is present) | $500.00 |
| (m) Section 475.42(1)(j), F.S. and Rule 61J2-10.034, F.A.C. – operated as a broker under a trade name without causing the trade name to be noted in the records of the Commission | $500.00 |
| (n) Section 475.451(3), F.S. – failed to obtain a multiple permit | $500.00 |
| (o) Section 475.4511(2), F.S. – advertised false, inaccurate, misleading, or exaggerated information | $500.00 |
| (p) Paragraph 61J2-3.009(4)(d), F.A.C. – failed to have a distance education course instructor available per published schedule | $300.00 |
| (q) Subsection 61J2-3.008(5)(a), F.A.C. – failed to inform students of course standards and requirements | $100.00 |
| (r) Subsection 61J2-3.015(2), F.A.C. – failed to provide a course completion report to a student; if a licensee, as the result of an audit/inspection, failed to provide a course completion report to the DBPR | $200.00 |
| (s) Rule 61J2-5.016, F.A.C. – sales associate or broker associate serving as an officer or director of a registered brokerage corporation | $200.00 |
| (t) Subsection 61J2-5.019(1), F.A.C. – failed to ensure that the corporation or partnership is properly registered; failed to ensure each officer, director and sales associate is properly licensed | $500.00 |
| (u) Rule 61J2-10.025, F.A.C. – advertised in a manner in which a reasonable person would not know one is dealing with a real estate licensee or brokerage; failed to include the registered name of the brokerage firm in the advertisement; failed to use the licensee’s last name as registered with the Commission in an advertisement | $500.00 |
| (v) Rule 61J2-10.027, F.A.C. – used the name or identification of an association or organization when the licensee was not in good standing or otherwise not entitled to use same | $300.00 |

|  |  |
| --- | --- |
| (w) Subsection 61J2-10.032(1), F.A.C. – broker failed to notify the Commission within the prescribed 15 business days but does so within 25 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C., and not timely complied with, failed to notify the Commission within 45 days but does so within 55 days | $100.00 |
| (x) Subsection 61J2-10.032(1) and (2), F.A.C. – broker failed to institute a settlement procedure within the prescribed 30 business days but does so within 40 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C., and not timely complied with, failed to institute a settlement procedure within 60 days but does so within 70 days | $100.00 |
| (y) Subsection 61J2-10.032(2), F.A.C. – broker failed to notify the Commission that the dispute settled or change in the current mailing address | $500.00 |
| (aa) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to indicate the name, address and telephone number of the title company or attorney on the contract | $200.00 |
| (bb) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to provide Seller’s broker, or Seller if not presented by a broker, within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit with either a copy of the written verification, or if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit | $500.00 |
| (cc) Subsection 61J2-14.012(2), F.A.C. – failed to properly reconcile an escrow account when the account balances | $500.00 |
| (dd) Subsection 61J2-14.014(1), F.A.C. – failed to secure the written permission of all interested parties prior to placing trust funds in an interest bearing escrow account | $300.00 |
| (ee) Subsection 61J2-14.014(2), F.A.C. – failed to stop interest from accruing prior to disbursement | $100.00 |
| (ff) Subsection 61J2-17.013(1), F.A.C. – guaranteed that a pupil would pass an examination | $500.00 |
| (gg) Failure to register a school location | $500.00 |
| (hh) Rule 61J2-17.014, F.A.C. – improper use of a guest lecturer | $100.00 |
| (ii) Rule 61J2-17.015, F.A.C. – failed to post the required language regarding recruitment for employment; recruiting for employment opportunities during class time | $300.00 |

**VIOLATION FINE**

(a) Section 475.180(2)(a), F.S. – a resident licensee failed to notify the   
Commission of becoming a $300.00  
nonresident as prescribed

(b) Sections 475.17(2)(a), 475.17(3)(a), 475.17(4)(a), F.S., Rule 61J2-3.008  
and 61J2-3.009, F.A.C .$500.00  
failed to provide the required number of classroom hours for an   
approved or prescribed course

(c) Section 475.175(2), F.S. and Rule 61J2-3.015, F.A.C. – failed to provide   
a course completion $100.00  
report to a student

(d) Section 475.22(1), F.S. and Rule 61J2-10.022, F.A.C. – failed to maintain  
the required office $500.00  
as prescribed

(e) Section 475.22(1), F.S. – failed to maintain the required office entrance sign $100.00

(f) Section 475.22(2), F.S. – failed to register an out of state Florida broker’s   
office $500.00

(g) Section 475.24, F.S., and 61J2-10.023, F.A.C. – failed to register a location   
as a branch office $200.00

(h) Section 475.25(1)(k), F.S. and subsection 61J2-14.010(1), F.A.C. – failed to  
immediately $200.00  
deposit trust funds provided the deposit is not more than 3 days late

(i) Section 475.25(1)(q), F.S. – failed to give the appropriate disclosure or   
notice at the appropriate $300.00  
time under the provisions of Section 475.2755 or 475.278, F.S. (A citation   
may only be given for a first time violation.)

(j) Section 475.25(1)(r), F.S. – failed to include the required information   
in a listing agreement; $200.00  
failed to give a copy to a principal within 24 hours; contains a self   
renewal clause

(k) Section 475.42(1)(b), F.S. – sales associate operating as a sales associate   
without a registered $500.00  
employer due to failure to renew or properly register

(l) Section 475.42(1)(i), F.S. – having a lis pendens placed by an attorney   
(Citation may be issued $500.00  
only if no other violation is present)

(m) Section 475.42(1)(j), F.S. and Rule 61J2-10.034, F.A.C. – operated as a   
broker under a tradename $500.00  
without causing the trade name to be noted in the records of the Commission

(n) Section 475.451(3), F.S. – failed to obtain a multiple permit $500.00

(o) Section 475.4511(2), F.S. – advertised false, inaccurate, misleading,   
or exaggerated information $500.00

(p) Paragraph 61J2-3.009(4)(d), F.A.C. – failed to have a distance education   
course instructor $300.00  
available per published schedule

(q) Subsection 61J2-3.008(5)(a), F.A.C. – failed to inform students of course   
standards and $100.00  
requirements

(r) Subsection 61J2-3.015(2), F.A.C. – failed to provide a course completion   
report to a student; if a $200.00  
licensee, as the result of an audit/inspection, failed to provide a   
course completion report to the DBPR

(s) Rule 61J2-5.016, F.A.C. – sales associate or broker associate serving   
as an officer or director of $200.00

a registered brokerage corporation

(t) Subsection 61J2-5.019(1), F.A.C. – failed to ensure that the corporation   
or partnership is properly $500.00  
registered; failed to ensure each officer, director and sales associate   
is properly licensed

(u) Rule 61J2-10.025, F.A.C. – advertised in a manner in which a reasonable   
person would not know $500.00  
one is dealing with a real estate licensee or brokerage; failed to include the registered name of the brokerage firm in the advertisement; failed to use the licensee’s last name as registered with the Commission in an advertisement

(v) Rule 61J2-10.027, F.A.C. – used the name or identification of an association   
or organization when $300.00  
the licensee was not in good standing or otherwise not entitled to use same

(w) Subsection 61J2-10.032(1), F.A.C. – broker failed to notify the Commission   
within the prescribed $100.00  
15 business days but does so within 25 business days; or, if a Notice of Noncompliance has been issued pursuant to Rule 61J2-24.003, F.A.C.,   
and not timely complied with, failed to notify the Commission within   
45 days but does so within 55 days

(x) Subsection 61J2-10.032(1) and (2), F.A.C. – broker failed to institute a   
settlement procedure within $100.00  
the prescribed 30 business days but does so within 40 business days; or,   
if a Notice of Noncompliance has been issued pursuant to   
Rule 61J2-24.003, F.A.C., and not timely complied with, failed to institute  
a settlement procedure within 60 days but does so within 70 days

(y) Subsection 61J2-10.032(2), F.A.C. – broker failed to notify the   
Commission that the dispute settled $100.00  
or went to court, or of the final accounting and disbursement within   
the prescribed 10 business days but broker does so within 20 business   
days; or, if a Notice of Noncompliance has been issued pursuant to   
Rule 61J2-24.003, F.A.C., and not timely complied with, failed to notify   
the Commission that the dispute settled or went to court, or of the final   
accounting and disbursement within 40 days but does so within 50 days

(z) Rule 61J2-10.038, F.A.C. – failed to timely notify the DBPR of the current  
mailing address or any $500.00  
change in the current mailing address

(aa) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to indicate   
the name, address and $200.00  
telephone number of the title company or attorney on the contract

(bb) Paragraph 61J2-14.008(2)(b), F.A.C. – Second offense failure to provide   
Seller’s broker, or Seller $500.00  
if not presented by a broker, within ten (10) business days of the   
date the Licensee’s broker made the written request for verification   
of the deposit with either a copy of the written verification, or if no   
verification is received by Licensee’s broker, written notice that   
Licensee’s broker did not receive verification of the deposit

(cc) Subsection 61J2-14.012(2), F.A.C. – failed to properly reconcile an   
escrow account when the account $500.00  
balances

(dd) Subsection 61J2-14.014(1), F.A.C. – failed to secure the written   
permission of all interested parties $300.00  
prior to placing trust funds in an interest bearing escrow account

(ee) Subsection 61J2-14.014(2), F.A.C. – failed to stop interest from accruing  
prior to disbursement $100.00

(ff) Subsection 61J2-17.013(1), F.A.C. – guaranteed that a pupil would pass an examination $500.00

(gg) Failure to register a school location $500.00

(hh) Rule 61J2-17.014, F.A.C. – improper use of a guest lecturer $100.00

(ii) Rule 61J2-17.015, F.A.C. – failed to post the required language regarding   
recruitment for $300.00  
employment; recruiting for employment opportunities during class time

(3) Citations may be issued to real estate licensees, permit holders, and registrants by the Division of Real Estate.

(4) Citations are to be served upon the subject either by personal service or certified mail, restricted delivery, to the subject’s last known address.

(5) The subject has 30 days from the date the citation becomes a final order to pay the fine. All fines are to be made payable to the “Department of Business and Professional Regulation – R. E. Citations” and sent to the Division of Real Estate in Orlando. A copy of the citation shall accompany the payment of the fine.

## 61J2-24.003 Notification of Noncompliance.

(1) Pursuant to Sections 455.225(3) and 120.695, F.S., the Commission sets forth below those statutes and rules which are considered minor violations for which the DBPR shall provide a licensee, registrant or permitholder with a notice of noncompliance. A violation is considered a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. The notice of noncompliance shall only be issued for an initial offense of a listed minor violation.

(a) Paragraph 61J2-3.009(5)(e), F.A.C. – failure to have a distance education instructor available.

(b) Subsection 61J2-3.009(6), F.A.C. – failure to inform students of course standards and requirements.

(c) Subsection 61J2-3.015(2), F.A.C. – failure to provide a course completion report to a student.

(d) Rule 61J2-5.016, F.A.C. – sales associate or broker associate serving as officer or director of a registered brokerage corporation.

(e) Section 475.22(1), F.S. – failure to maintain the office entrance sign as required.

(f) Subsections 61J2-10.032(1) and (2), F.A.C. – failure to perform the required act within the stated time frame but does so no later than 30 days after the stated time frame.

(g) Rule 61J2-10.034, F.A.C. – failure to register a trade name with the Division of Real Estate.

(h) Subsection 61J2-14.008(2)(b), F.A.C. – initial offense of failure to indicate the name, address and telephone number of the title company or attorney on the contract will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.

(i) Subsection 61J2-14.008(2)(b), F.A.C. – initial offense of failure to provide Seller’s broker, or Seller if not presented by a broker, within ten (10) business days of the date the Licensee’s broker made the written request for verification of the deposit with either a copy of the written verification, or if no verification is received by Licensee’s broker, written notice that Licensee’s broker did not receive verification of the deposit, will receive a notice of non-compliance without citation for a period of twelve months after the effective date of this rule.

(j) Rule 61J2-14.012, F.A.C. – failure to sign the escrow account reconciliation if the account balances.

(k) Subsection 61J2-14.014(2), F.A.C. – failure to stop interest from accruing prior to disbursement.

(l) Section 475.451(8), F.S. – failure to keep registration records, course, rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.

(m) Rule 61J2-17.014, F.A.C. – improper use of a guest lecturer.

(n) Rule 61J2-17.015, F.A.C. – improper recruiting; failure to post the required statement.

(2) The DBPR shall issue a notice of noncompliance to the licensee, registrant or permitholder subject to the statute and rule that the statute and rule have been violated. The notice of noncompliance shall identify the statute and rule being violated and shall provide information on how to comply with the statute and rule. The DBPR shall allow 15 days for compliance with the statute and rule and shall so notify the licensee, registrant or permitholder. The time for compliance shall begin to run from the time the licensee, registrant or permitholder receives the notice of noncompliance. The failure of a licensee, registrant or permitholder to comply with the notice of noncompliance within the time allowed shall thereafter result in the issuance of a citation pursuant to Rule 61J2-24.002, F.A.C., and, if there is no citation for the violation, then the institution of regular disciplinary proceeding pursuant to Section 455.225, F.S.

(3) The notice of noncompliance may be delivered to the licensee, registrant or permit holder’s current mailing address by certified mail, by restricted delivery or by personal service. The notice of noncompliance may be issued by the Division of Real Estate.

## 61J2-24.004 Mediation.

(1) “Mediation” means a process, pursuant to Section 455.2235, F.S., whereby a mediator appointed by the DBPR acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal process with the objective of assisting the complainant and subject of the complaint to reach a mutually acceptable resolution.

(2) The Commission finds that mediation is an acceptable method of dispute resolution for the following violations as they are economic in nature or can be remedied by the subject of the complaint:

(a) Failure to maintain office or sign at entrance of office pursuant to Section 475.22, F.S.

(b) Failure to register a branch office pursuant to Section 475.24, F.S.

(c) Failed to deliver to a licensee a share of a real estate commission if the licensee has obtained a civil judgment and the judgment has not been satisfied pursuant to Section 475.25(1)(d), F.S.

## 61J2-24.006 Probation.

(1) Unless otherwise stated in the final order a term of probation shall be ninety (90) days, to commence thirty (30) days after the filing of the final order.

(2) If a respondent is unable to complete the requirements of probation within the ninety (90) days or such other time specified in the final order, the Division Director is authorized to grant a one-time 180 days extension for the following reasons:

(a) Illness;

(b) Unavailability of a required course.

(c) Economic hardship. This means that the respondent has completed all requirements of probation except for the payment of fines or costs and is presently unable to pay.

(3) In the event the Division Director denies a request for extension or the request for extension involves a reason other than stated in subsection (2), then the request shall be heard by the Commission.

(4) It is the responsibility of the respondent to submit to the Division Director or the Commission written documentation to substantiate the request for extension. Such request must be made prior to the expiration of the initial term of probation. Failure to request an extension either of the Division Director or the Commission within the initial term of probation will result in the automatic denial of the request for extension and any penalty or penalties associated with the failure to timely complete probation will become effective.

(5) The respondent will be released early from probation upon the successful completion of the terms of probation and the required information being submitted to the Division of Real Estate Legal Section.

(6) When as a term of probation, the Commission orders a respondent to attend one or more meetings of the Commission, the respondent shall comply with the following in order to obtain credit for attending the meeting:

(a) The respondent shall arrive not less than 5 minutes prior to the published starting time and date on the meeting agenda, absent good cause. Inability to find a parking space shall not constitute good cause. The respondent is responsible for arriving early enough to obtain suitable parking;

(b) The respondent is permitted short absences from the meeting for not more than 5 minutes each hour. Failure to remain in the meeting at least 55 minutes per hour without prior permission of Division staff or the Chair of the Commission will result in a Commission decision to not award credit for attendance at a Commission meeting;

(c) Except as otherwise allowed by this section, the respondent is required to attend the meeting in its entirety;

(d) All electronic devices must be turned off; and

(e) Failure to comply with this subsection or any other direction of the Commission consistent with an orderly public meeting will result in loss of credit for attendance at the entire meeting of the Commission.

(f) Any respondent requiring special accommodations to attend the meeting, because of a disability, must contact the Division of Real Estate staff at 400 West Robinson Street, Suite N801, Orlando, Florida 32801-1757, Call.Center@dbpr.state.fl.us, (850)487-1395 at least two weeks prior to the meeting date. The Commission will make a reasonable accommodation for those respondents who demonstrate they require special accommodations because they are a person who has a mental or physical impairment that substantially limits one or more of the major life activities of such individual.

# CHAPTER 61J2-26 NONRESIDENT LICENSURE

## 61J2-26.001 Examination Requirements.

(1) The Florida Real Estate Commission has determined that it is in the best interest of the public's welfare to ensure a nonresident seeking licensure in this State, pursuant to s. 475.180, Florida Statutes, is knowledgeable in Florida law, statutes and administrative rules. To properly ensure such applicant has this knowledge, a written examination will be mandatory. This examination will consist of 40 questions, with each question being worth one (1) point. An applicant who receives a grade of 30 points or higher shall be deemed to have successfully completed the examination requirement for nonresident licensure.

(2) The subject area of the examination shall consist of general real estate license law. While knowledge of all subject areas is required, particular emphasis will be placed on Chapters 455 and 475, Florida Statutes, and on the rules of the Florida Real Estate Commission found in Chapter 61J2 of the Florida Administrative Code.

(3) This examination will be required of all applicants for nonresident licensure, regardless of jurisdiction, and shall become a part of each written agreement implementing the provisions of s. 475.180, Florida Statutes.

## 61J2-26.002 Residency.

The Florida Real Estate Commission recognizes that nonresidents of Florida may have a lesser opportunity than Florida residents to avail themselves of the education, experience, and examination requirements necessary for Florida licensure, and that such nonresidents may therefore apply for licensure under s. 475.180(1), Florida Statutes, as implemented in Rule Chapter 61J2-2, Florida Administrative Code. For purposes of s. 475.180(1), Florida Statutes, a "resident" of Florida is defined as:

(1) a person who has resided (regardless of whether the place or base of residence is a recreational vehicle, hotel, rental unit, or any other temporary or permanent situs) in Florida, continuously for a period of 4 calendar months or more, within the preceding one year; or

(2) a person who presently resides (regardless of whether the place or base of residence is a recreational vehicle, hotel, rental unit, or any other temporary or permanent situs) in Florida, with the intention to reside continuously in Florida for a period of 4 months or more, commencing on the date that the person began the current period of residence in Florida.

## 61J2-26.003 Post-License and Continuing Education.

(1) The Florida Real Estate Commission has determined that it is in the best interest of the public welfare that a non-resident securing licensure pursuant to s. 475.180, Florida Statutes, keep abreast of current Florida law. To properly ensure such knowledge subsequent to securing licensure through s. 475.180, Florida Statutes, the non-resident licensee must satisfy post-license and continuing education requirements as follows:

(a) All applicants for non-resident licensure must satisfactorily complete a Commission prescribed or approved post-license educational course prior to the first renewal following licensure. The standards and requirements for the post-license education course will be in accordance with Rule 61J2-3.020, Florida Administrative Code.

(b) Subsequent to the first renewal period, all non-resident licensees are required to satisfactorily complete the continuing education requirements pursuant to Rule 61J2-3.009, Florida Administrative Code. The standards and requirements for continuing education will be in accordance with Rule 61J2-3.009, Florida Administrative Code.

(2) Failure of a non-resident licensee to satisfactorily complete the post-license education requirement shall result in the penalties prescribed in s. 475.17(3) or (4), as applicable.

(3) Hardship cases for post-license education shall be governed by and as defined in Rule 61J2-3.013, Florida Administrative Code.

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1. 1Note.—As amended by s. 1, ch. 2014-74. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, “Statutory Construction.” Subparagraph (2)(b)3. was also amended by s. 9, ch. 2014-133, and that version reads:

   3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked at any time at the pleasure of the unit owner executing it. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. *These form links added by SGray of Gray Systems, Inc.* [↑](#footnote-ref-3)
4. See Also: <file:///C:/Users/Suzanne%20Gray/Documents/GSI_Compendium%20ebook/2017/FAC-Compares/DH%20921%20(03.1998)%2064E-9.004.pdf> [↑](#footnote-ref-4)