

MANAGEMENT & ASSOCIATES PRESENTS
2016
BOARD CERTIFICATION COURSE

RISK MANAGEMENT, RESERVES, OPERATIONS “OH-MY”

Comprehensive Board Certification
Course

FLORIDA STATUTES GOVERNING ASSOCIATIONS

- Condominium Associations
 - Chapter 718 of the Florida Statutes
- Homeowner's Associations
 - Chapter 720 of the Florida Statutes
- Florida Administrative Code
 - Chapters 61B-15 through 25, 45, and 50

BOARD POWERS and DUTIES

Definition of the Board

718.103 (4), F.S.

720.303 (3), F.S.

“The Board of Administration or “Board” means the representative body which is responsible for administration of the association”

Fiduciary Relationship

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

720.303 (1), F.S.

In both Condominiums and HOA's, the officers and directors have a fiduciary relationship to the unit owners.

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

Association Powers and Duties

718.111(2),F.S.

720.303,F.S.

- The association powers and duties include those spelled out in the laws governing corporations, within the governing documents of the association and this is in addition to powers and duties provided in the Condominium Act.

Association Powers and Duties continued....

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

Association Powers and Duties continued...

- The association has the power to
 - Make and collect assessments
 - Lease common elements
 - Maintain common elements
 - Repair/Replace common elements or association property

Association Powers and Duties continued...

The Association has the power to acquire title to property:

- Real property
- Personal property for the use and/or benefit of the members.

Budgets and Reserves

Budget

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

720.303(6)(a), F.S.

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

Budget Meeting
718.112(2)(e)(f), F.S.
720.303(2)(2), F.S. &
61B-22,003(1), F.A.C.

Notices:

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

Budget Meeting
718.112(2)(e)(f), F.S.
720.303(2)(2), F.S. &
61B-22,003(1), F.A.C

- It is not required for a proposed budget to be included with the notice of the budget meeting for a homeowner's association. The board adopts the budget whether reserves are fully funded or not.

Operating Budget Requirements
718.112(2)(f)1, and 718.504(21), F.S.
720.303 (6)(a)(b)&©, F.S.

- Budgets must include estimated revenues and expenses. Revenues must include, if applicable:
 - Assessments
 - Interest
 - Insurance proceeds
 - Any other form of income

Operating Budget Requirements
718.112(2)(f)1, and 718.504(21), F.S.
720.303 (6)(a)(b)&©, F.S. continued.....

- **Expenses must include:**

- Annual Condominium Fees paid to the State (Condominiums only)
- Insurance/Fidelity bonding

If applicable:

- Administrative Expenses
- Management fees
- Maintenance
- Rent for recreation and other commonly used facilities
- Taxes upon association property
- Taxes upon leased areas
- Security provisions
- Professional fees

Operating Budget Requirements
718.112(2)(f)1, and 718.504(21), F.S.
720.303 (6)(a)(b)&©, F.S. continued.....

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

Other Required Information

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

- Beginning and ending dates for the period covered by the budget
- Total expenses, including reserves on at least an annual basis
- Assessments per unit according to the proportion of ownership

The 115% Rule

- Chapter 718.112(2)(e)2., F.S. provides, “If assessments are greater than 115% of the previous year’s assessments, unit owners MAY be entitled to consider an alternative budget.
- For Homeowner’s Association you must apply what is written in the Association’s governing documents.

Reserves

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

720.303(6)(c)(d)(e)(f) and (g)

- Capital Expenditures – Purchase or replacement of an asset with life of more than one year, or addition to existing asset to extend its life more than one year.
- Deferred Maintenance – Any maintenance or repair that will be performed less frequently than yearly and will result in maintaining the useful life of an asset.
- Reserves – Any funds other than operating funds, which are restricted for deferred maintenance and capital expenditures, including the items required by the Condominium Act, and any other funds restricted as to use by the condominium documents or the condominium association, Chapter 720 of the Florida Statutes, and any Homeowner's Association governing documents.

Requirements Regarding Reserves

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

720.303 (6)(2)(d), F.S.

- In a condominium your reserves must include:
 - Roof replacement
 - Building painting
 - Pavement resurfacing and
 - Any other item of deferred maintenance or capital expenditure exceeding \$10,000.00 which may include retrofitting of fire sprinklers

Requirements Regarding Reserves

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

720.303 (6)(2)(d), F.S.

continued.....

- Homeowner's Associations provide, " 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 established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided 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."

Requirements Regarding Reserves

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

720.303 (6)(2)(d), F.S.

continued.....

- Proposed budgets must include fully funding reserves.
- Reserve schedule must be included with proposed budgets.
- This may not apply to a homeowner's association as the developer may not have established reserves for the association.

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

- Items needed in order to calculate reserves
 - Total estimated life
 - Remaining estimated life (#years)
 - Anticipated replacement/deferred maintenance cost
 - Anticipated beginning balance in reserve fund
- Note: Projected cost may be determined by incorporating a calculation for expected interest and inflation

Straight Line Method Formula

The formula for using the straight line method is:

- Anticipated replacement/deferred maintenance cost LESS anticipated beginning balance in reserve fund = Remaining reserves needed
- Remaining reserves needed divided by remaining life (#years) = the amount needed in the current year to fully fund.

Pooled Reserves

Defined – The association may have a single source of funds to pay for multiple categories of reserve expenses. For example, if an association establishes a pooled reserve account for roof replacement, building painting and pavement resurfacing funds may be drawn from this account to pay for any of the three items. Note: A membership vote is required in order to go from component funding to pooling.

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

Pooled Method Formula

- The amount of the contribution to the pooled reserve account shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect, plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool is = or > the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis.

Pooled Method Formula continued...

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

Interest

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

720.303(6)(g)(1)(b), F.S.

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

Commingling
718.112(2)(e)(3), F.S
720.303(8), F.S.
61B-22005(2), F.A.C.

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

Other Reserves

- The formula used need not be the statutory formula
- Shall show the reserve calculation in a separate reserve section of the budget. Other reserves could be:
 - Insurance Deductible
 - Hurricane Cleanup
 - Capital Expenditures/Deferred Maintenance
 - Drainage/Plumbing

Waiving Reserves or Providing Reserves less than Fully Funding
718.112(2)(f)2., F.S.
720.303(6)(c), F.S.

- May be accomplished at a duly called unit owner's meeting (Condominiums)
- May be accomplished at a duly called Board meeting wherein all unit owner's were noticed (HOA)
- Vote required is a majority of those present or voting by limited proxy at the meeting, (assuming the quorum requirement is met; Condominium)
- A Board vote is the only vote required (assuming there is a quorum of the Board present; HOA)
- Vote only applies to one fiscal year

Use of Limited Proxy
718.112(2)(f)4.F.S.

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

Waiving Reserves in Whole or Partially

720.303(6), F.S.

- 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 SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.**
- 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.**

Financial Reporting

Year-end Financial Reporting
718.111(13), F.S.
720.303(7), F.S.

The Condominium Act and Chapter 720 of the Florida Statutes requires that every Condominium Association and every Homeowner's Association to prepare a year-end summary of the financial activities and financial position of the association

Year-end Financial Reporting

718.111(13), F.S.

720.303(7), F.S. continued.....

- The report covers the association's prior fiscal year.
- Due 90 days after the end of the fiscal year or annually on a date provided in the bylaws.
- No later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

Types of Financial Reports

There are 2 types of Financial Reports.

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

Who Prepares What?

Reports of Cash Receipts and Disbursements

- Associations comprised of fewer than 50 units or less than \$150,000.00 in annual revenues.

Financial Statements

- Associations comprised of 50 or more units AND \$150,000.00 or more annual revenues and associations whose documents require financial statements.

Report of Cash Receipts and Disbursements

This is a report of the prior years financial activities prepared on a cash basis

- Cash basis – Reporting of receipts and expenditures as they actually occurred. This is similar to your check book, in that it shows cash coming in, (deposits) and cash going out (expenses).

Financial Statements

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

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

Financial Statements

There are three levels of financial statements.

They are as follows:

- Audit – 50 or more units and annual revenues of \$500,000.00 or more
- Review – 50 or more units and annual revenues of \$300,000.00 or more but less than \$500,000
- Compilation – 50 or more units and annual revenues of \$150,000 or more, but less than \$300,000.00

Financial Statements

Audited and Reviewed Financial Statements
must be performed by an independent Florida
Licensed CPA

Compiled Financial Statements do not have to
be prepared by a CPA.

Providing a Lower Level of Year-end Report

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

Providing a Lower Level of Year-end Report

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

720.303 (7) , F.S.

- In a condominium financial reporting may not be waived for more than 3 consecutive years
- In a condominium the developer may cast his/her votes only for the first 2 fiscal years
- For both HOA's and Condos any audit or review prepared prior to turnover of the control of the association shall be paid for by the developer
- For both HOA's and Condos: **AN ASSOCIATION CANNOT WAIVE THE REQUIREMENT TO PREPARE THE YEAR-END FINANCIAL REPORT**

INSURANCE

- In a condominium 718.111(11), F.S. provides that the association shall use it's best effort to obtain and maintain insurance to protect the association, the association property, the common elements and the condominium property that is required to be insured by the association.
- The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property and units.

Insurance, continued...

- In a condominium 718.111(11), F.S. provides that the association shall obtain and maintain insurance or fidelity bonding to cover the following
 - The president, secretary, treasurer and all persons who control or disburse funds of the association
 - The policy or bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time.

Insurance Continued

- 718.111(11)(j)

If damage is not covered by the association's insurance carrier because it is not an insurable event, the obligation to repair or replace the damaged items is determined by reviewing the governing documents.

Insurance Continued

- Condos Only: Abandoned Units 718-111(5)

The association can enter an abandoned unit to inspect and make repairs to the unit and/or common elements, address mold or deterioration, turn on the power to the unit. There are specific steps to follow to determine that the unit is abandoned.....

Insurance continued.....

- In a Homeowner's Association 720.303(3) provides, 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.

Commingling of Association Funds

718.111(14), F.S.

720.303(8), F.S.

- In both Condominiums and Homeowner's Associations the Board SHALL NOT commingle association funds with:

- Any officer's or director's private funds
- Any manager's or employee's private funds
- Any other association's funds.

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

Commingling of Association Funds

718.111(14), F.S.

720.303(8), F.S. continues...

- Homeowner's Association specifically provides, 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.
- 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.
- 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.

Reporting Requirements

HOA's Only

720.303(13), F.S.

- The community association manager or management firm, or the association when there is no community association manager or management firm, shall report to the division by November 22, 2013, in a manner and form prescribed by the division.
- (a) The report shall include the association's:
 - 1. Legal name.
 - 2. Federal employer identification number.
 - 3. Mailing and physical addresses.
 - 4. Total number of parcels.
 - 5. Total amount of revenues and expenses from the association's annual budget.

Reporting Requirements

HOA's Only

720.303(13), F.S. continued.....

- (b) For associations in which control of the association has not been transitioned to non-developer members, as set forth in s. 720.307, the report shall also include the developer's:
 - 1. Legal name.
 - 2. Mailing address.
 - 3. Total number of parcels owned on the date of reporting.
- (c) The reporting requirement provided in this subsection shall be a continuing obligation on each association until the required information is reported to the division.

Reporting Requirements

HOA's Only

720.303(13), F.S. continued.....

- (d) By October 1, 2013, the department shall establish and implement a registration system through an Internet website that provides for the reporting requirements of paragraphs (a) and (b).
- (e) The department shall prepare an annual report of the data reported pursuant to this subsection and present it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2013, and each year thereafter.
- (f) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.
- (g) This subsection shall expire on July 1, 2016, unless reenacted by the Legislature.

Respond to Unit Owner Letters of Inquiry
Condominiums Only
718.112(2)(a)2, F.S.

For inquiries sent certified mail:

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

Amendment of Bylaws
Condominiums
718.112(2)(h), F.S.

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

Amendment of Bylaws
Homeowner's Associations
617.0206, F.S.
720.306(1)(b)(c), F.S.

Chapter 617 of the Florida Statutes, which governs not-for-profit corporations provides,

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.

Chapter 720.306(1)(b)(c) provides,

- 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.
- 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 chapter 607 or chapter 617 shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Provide a Certificate Signed by an Officer or Agent of the Association

“Estoppel Letter”

718.116(8), F.S.

720.30851, F.S.

- Within 15 days after receiving written request from a unit owner, purchaser, or mortgagee the Board must provide a certificate that states all assessments and other monies owed to the association by the unit owner with respect to the condominium parcel.

Fining

720.305 (2) HOA 718.303 (3)(a)(b)

- (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 non-prevailing party as determined by the court.
- (b) A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person 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, it 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 of administration imposes a fine or suspension, 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.

Fining

720.305 (2)HOA 718.303 (3)(a)(b)

Continued

- (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 and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. 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 agree, the fine or suspension may not be imposed.

OBTAIN COMPETITIVE BIDS

718.3026(1), F.S.

720.3055(2) F.S.

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

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

THE ASSOCIATION IS NOT OBLIGATED TO ACCEPT THE LOWEST BID

OBTAIN COMPETITIVE BIDS

718.3026(1), F.S.

720.3055(2) F.S. Continued...

In a Homeowner's Association, Chapter 720 provides, 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 % 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.

Unit Owner Delinquency

718.116(11), F.S.

720.3085(8)(a), F.S.

- Condominiums:
- 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.

Unit Owner Delinquency

718.116(11), F.S.

720.3085(8)(a), F.S. continued....

- 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.

Unit Owner Delinquency

718.116(11), F.S.

720.3085(8)(a), F.S. continued...

- (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 moneys 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.

Unit Owner Delinquency

718.116(11), F.S.

720.3085(8)(a), F.S. continued....

Homeowner's Associations

- 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 the 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.
-

Unit Owner Delinquency

718.116(11), F.S.

720.3085(8)(a), F.S. continued....

- 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.

Unit Owner Fines or Suspension of Use Rights

718.303, F.S.

720.305, F.S.

Condominiums provide:

- 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's 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's 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.

Unit Owner Fines or Suspension of Use Rights

718.303, F.S.

720.305, F.S. continued....

- (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 on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. 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.

Unit Owner Fines or Suspension of Use Rights

718.303, F.S.

720.305, F.S. continues

- (b) A fine or suspension may not be imposed unless the association first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree, the fine or suspension may not be imposed.
- (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 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 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 unit's occupant, licensee, or invitee by mail or hand delivery.

TYPES OF MEETINGS

- Board of Director's Meetings
- Budget Meetings
- Annual Meetings
- Special Member's Meetings
- Emergency Meetings
- Committee Meetings

Notice of Meetings

718.112(2)(c),(d),&(e), F.S.
720.3032, F.S.

Condominiums:

- 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. 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.
- Unit owner meetings.—
- 1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.
- 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.

Notice of Meetings

718.112(2)(c),(d),&(e), F.S.
720.3032, F.S. continues.....

- Homeowner's Associations
- 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. 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 for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

Notice of Meetings

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

720.3032, F.S. continues.....

- 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 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 bylaws or amended bylaws may provide for giving 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; 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.

Annual Meetings
718.112(2)(d), F.S.
720.306(2), F.S.

Both Condominiums and HOA's provide,

There shall be an annual meeting of the unit owners held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the property. The purpose of the annual meeting is:

- To fill any vacancy on the Board caused by the expiration of a term which must be filled by electing a new board member. The election must be held the same day and place as the association's annual meeting.
- To conduct any other business.
- Written notice must be mailed, delivered or electronically transmitted to each unit owner and posted at least 14 continuous days preceding the meeting.

Condominiums only can discuss via email

718.112(2)(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.

ELECTIONS

CONDOMINIUMS

Advance Notice

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

Advanced Notice continued....

The First Notice of Election

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

Advanced Notice continued....

The Second notice of election

- The second notice of election must be mailed or hand delivered to the unit owners with the annual meeting notice and agenda not less than 14 days, and not more than 34 days, prior to the election.
- Included with the second notices are the printed ballots, the envelopes for returning the completed ballots and any candidate information sheets that have been submitted to the board.

Electing your Board of Administration

718.112(4)

- The members of the board 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. Any 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 8 1/2 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.

Electing your Board of Administration Continued....

NOMINATING COMMITTEES ARE PROHIBITED

Terms of Office/Qualifying for the Board

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

- Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall 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 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. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms. 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 condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests,

Terms of Office/Qualifying for the Board 718.112(d)(2), F.S. continued...

- 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. Any unit owner 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.

Electronic Voting 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.

HOMEOWNER'S ASSOCIATIONS

Advanced Notice

- One notice must be mailed, hand delivered or electronically transmitted to the unit owners prior to the election

Election to the Board of Directors

720.306(9)(a), F.S.

- Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself 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. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Qualifying for the Board

720.306(9)(b), F.S.

- A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for board membership. 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, 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 member of the board is ineligible for board membership.

Electronic Voting HOA

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.

Winner, Winner

- An impartial committee tabulates votes
- The candidate with the most votes wins
- If there is a tie, the association conducts a runoff.

Board Member Certification

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

720.3033(1)(a)(b)(c), F.S.

Condominiums:

Within 90 days after being elected or appointed to the board, 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 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 sub-subparagraph. 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.

Board Member Certification

718.112(2)(d)4,b.,F.S.
720.3033(1)(a)(b)(c), F.S. continues....

Homeowner's Associations:

- 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S.

Condominiums:

- 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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 subparagraph (c)5. 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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 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).
- (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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (c) 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. 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:

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- Homeowner's Association
- 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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (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 fee to a member or his or her authorized representative for the use of a portable device.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (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.

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- (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

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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:

Official Records and Inspection of Records

718.112(12), F.S.

720.303(4), F.S. continued....

- 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.

Dispute Resolution
718.1255, F.S.
720.311, F.S.

Condominiums:

- 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.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- “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.

Dispute Resolution
718.1255, F.S.
720.311, F.S. continued...

- (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's fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- (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 shall 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 section. 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. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto.

Dispute Resolution
718.1255, F.S.
720.311, F.S. continued...

- 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.

Dispute Resolution
718.1255, F.S.
720.311, F.S. continued...

- (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, a copy of the petition shall be served by the division upon all respondents.
- (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.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- (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 attorneys' 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.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- (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.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued....

- (k) The arbitration decision shall be 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's fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation.
- (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's 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's 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's 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.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- Homeowner's Associations
- 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's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Dispute Resolution

718.1255, F.S.

720.311, F.S. continued...

- (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's 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.