

**Department  
of  
Business  
and  
Professional  
Regulation**

*Division of Florida  
Condominiums,  
Timeshares,  
And  
Mobile Homes*

*Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida  
32399-1030*

**CHAPTER 718  
FLORIDA STATUTES**

**THE CONDOMINIUM ACT**

*And  
Chapters 61B-15 Through 25, 45 and 50  
Florida Administrative Code*



Includes laws enacted through the 2015 Legislative Session

## NOTICE TO RECIPIENT

Chapter 718 of the Florida Statutes, also known as The Condominium Act, is a chapter of law that governs condominiums in the State of Florida. The Condominium Act should be read in conjunction with Chapters 61B-15 through 25, 45 and 50, Florida Administrative Code. The administrative rules are promulgated by the Division of Florida Condominiums, Timeshares, and Mobile Homes to interpret, enforce, and implement Chapter 718, Florida Statutes.

Division of Florida Condominiums, Timeshares, and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, FL 32399-1030  
(850) 488-1122  
(800) 226-9101

This publication was undertaken expressly for the convenience of those who frequently refer to The Condominium Act, and is not in any way intended to be an official published version of the law.

*Editor's note:* To aid the user of this booklet, the references in the upper left hand corner on each page are to the first section or subsection on that page, while the references in the upper right hand corner on each page are to the last section or subsection shown on that page.

CHAPTER 718

CONDOMINIUMS

PART I GENERAL PROVISIONS (ss. 718.101-718.128)

PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS (ss. 718.202, 718.203)

PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION (ss. 718.301-718.303)

PART IV SPECIAL TYPES OF CONDOMINIUMS (ss. 718.401-718.406)

PART V REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS (ss. 718.501-718.509)

PART VI CONVERSIONS TO CONDOMINIUM (ss. 718.604-718.622)

PART VII DISTRESSED CONDOMINIUM RELIEF (ss. 718.701-718.708)

PART I

GENERAL PROVISIONS

		718.120	Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates.
		718.121	Liens.
		718.122	Unconscionability of certain leases; rebuttable presumption.
		718.1224	Prohibition against SLAPP suits.
		718.1225	Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.
718.101	Short title.	718.123	Right of owners to peaceably assemble.
718.102	Purposes.	718.1232	Cable television service; resident's right to access without extra charge.
718.103	Definitions.	718.124	Limitation on actions by association.
718.1035	Power of attorney; compliance with chapter.	718.125	Attorney's fees.
718.104	Creation of condominiums; contents of declaration.	718.1255	Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.
718.1045	Timeshare estates; limitation on creation.	718.1256	Condominiums as residential property.
718.105	Recording of declaration.	718.1265	Association emergency powers.
718.106	Condominium parcels; appurtenances; possession and enjoyment.	718.127	Receivership notification.
718.107	Restraint upon separation and partition of common elements.	718.128	Electronic voting.
718.108	Common elements.		
718.1085	Certain regulations not to be retroactively applied.		
718.109	Legal description of condominium parcels.		
718.110	Amendment of declaration; correction of error or omission in declaration by circuit court.		
718.111	The association.		
718.112	Bylaws.		
718.1124	Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.		
718.113	Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.		
718.114	Association powers.		
718.115	Common expenses and common surplus.		
718.116	Assessments; liability; lien and priority; interest; collection.		
718.117	Termination of condominium.		
718.118	Equitable relief.		
718.119	Limitation of liability.		

**718.101 Short title.**—This chapter shall be known and may be cited as the “Condominium Act.”

*History.*—s. 1, ch. 76-222.

**718.102 Purposes.**—The purpose of this chapter is:

- (1) To give statutory recognition to the condominium form of ownership of real property.
- (2) To establish procedures for the creation, sale, and operation of condominiums.

Every condominium created and existing in this state shall be subject to the provisions of this chapter.

*History.*—s. 1, ch. 76-222.

**718.103 Definitions.**—As used in this chapter, the term:

- (1) “Assessment” means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

(3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

(4) "Board of administration" or "board" means the board of directors or other representative body which is responsible for administration of the association.

(5) "Buyer" means a person who purchases a condominium unit. The term "purchaser" may be used interchangeably with the term "buyer."

(6) "Bylaws" means the bylaws of the association as they are amended from time to time.

(7) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.

(8) "Common elements" means the portions of the condominium property not included in the units.

(9) "Common expenses" means all expenses properly incurred by the association in the performance of its duties, including expenses specified in s. 718.115.

(10) "Common surplus" means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.

(11) "Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

(12) "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.

(13) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(14) "Conspicuous type" means bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law.

(15) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

(17) "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(18) "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

(19) "Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

(20) "Multicondominium" means a real estate development containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

(22) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(23) "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of

each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

(24) "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

(25) "Timeshare estate" means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time.

(26) "Timeshare unit" means a unit in which timeshare estates have been created.

(27) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(28) "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

(29) "Voting certificate" means a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.

(30) "Voting interests" means the voting rights distributed to the association members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

**History.**—s. 1, ch. 76-222; s. 1, ch. 78-328; s. 2, ch. 80-3; s. 6, ch. 80-323; s. 1, ch. 84-368; s. 45, ch. 85-62; s. 1, ch. 90-151; s. 1, ch. 91-103; s. 5, ch. 91-426; s. 1, ch. 92-49; s. 34, ch. 95-274; s. 850, ch. 97-102; s. 1, ch. 98-322; s. 73, ch. 99-3; s. 48, ch. 2000-302; s. 19, ch. 2001-64; s. 34, ch. 2004-279; s. 12, ch. 2004-353; s. 3, ch. 2007-80; s. 45, ch. 2008-240; s. 7, ch. 2010-174.

**718.1035 Power of attorney; compliance with chapter.**—The use of a power of attorney that affects any aspect of the operation of a condominium shall be subject to and in compliance with the provisions of this chapter and all condominium documents, association rules and other rules adopted pursuant to this chapter, and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

**History.**—s. 4, ch. 86-175.

**718.104 Creation of condominiums; contents of declaration.**—Every condominium created in this state shall be created pursuant to this chapter.

(1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of s. 718.401.

(2) A condominium is created by recording a declaration in the public records of the county where

the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located or any other requirement or description that a declaration may provide. Upon recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(3) All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.

(4) The declaration must contain or provide for the following matters:

(a) A statement submitting the property to condominium ownership.

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."

(c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) A survey of the land which meets the standards of practice established by the Board of Professional Surveyors and Mappers, pursuant to s. 472.027, and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Failure of the survey to meet the standards of practice does not invalidate an otherwise validly created condominium.

The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor and mapper authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. 718.105 that the construction of the improvements is substantially

complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor and mapper as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to such declaration. This section does not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. 718.403 before conveying a unit as provided in this paragraph. For the purposes of this section, a "certificate of a surveyor and mapper" means certification by a surveyor and mapper in the form provided in this paragraph and may include, along with certification by a surveyor and mapper, when appropriate, certification by an architect or engineer authorized to practice in this state. Notwithstanding the requirements of substantial completion provided in this section, this paragraph does not prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded before the recording of a certificate of a surveyor and mapper as provided in this paragraph.

(f) The undivided share of ownership of the common elements and common surplus of the condominium that is appurtenant to each unit stated as a percentage or a fraction of the whole. In the declaration of condominium for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each residential unit shall be based either upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium or on an equal fractional basis.

(g) The percentage or fractional shares of liability for common expenses of the condominium, which, for all residential units, must be the same as the undivided shares of ownership of the common elements and common surplus appurtenant to each unit as provided for in paragraph (f).

(h) If a developer reserves the right, in a declaration recorded on or after July 1, 2000, to create a multi-condominium, the declaration must state, or provide a specific formula for determining, the fractional or

percentage shares of liability for the common expenses of the association and of ownership of the common surplus of the association to be allocated to the units in each condominium to be operated by the association. If a declaration recorded on or after July 1, 2000, for a condominium operated by a multicondominium association as originally recorded fails to so provide, the share of liability for the common expenses of the association and of ownership of the common surplus of the association allocated to each unit in each condominium operated by the association shall be a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of units in all condominiums operated by the association.

(i) The name of the association, which must be a corporation for profit or a corporation not for profit.

(j) Unit owners' membership and voting rights in the association.

(k) The document or documents creating the association, which may be attached as an exhibit.

(l) A copy of the bylaws, which shall be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(m) Other desired provisions not inconsistent with this chapter.

(n) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless:

1. Any such lien is subordinate to the rights of unit owners, or

2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated.

(o) If timeshare estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium. In addition, the degree, quantity, nature, and extent of the timeshare estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit.

(5) The declaration as originally recorded or as amended under the procedures provided therein may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of

allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his or her interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 78-328; s. 7, ch. 78-340; s. 1, ch. 79-314; s. 3, ch. 82-199; s. 2, ch. 84-368; s. 2, ch. 90-151; s. 2, ch. 91-103; ss. 1, 5, ch. 91-426; s. 122, ch. 94-119; s. 851, ch. 97-102; s. 1, ch. 98-195; s. 49, ch. 2000-302; s. 5, ch. 2002-27; s. 1, ch. 2013-122; s. 24, ch. 2014-147.

**718.1045 Timeshare estates; limitation on creation.**—No timeshare estates shall be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

**History.**—s. 3, ch. 78-328.

**718.105 Recording of declaration.—**

(1) When executed as required by s. 718.104, a declaration together with all exhibits and all amendments is entitled to recordation as an agreement relating to the conveyance of land.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of a surveyor required by s. 718.104, may be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may, for his or her convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

(4)(a) If the declaration does not have the certificate or the survey or graphic description of the improvements required under s. 718.104(4)(e), the developer shall deliver therewith to the clerk an estimate, signed by a surveyor authorized to practice in this state, of the cost of a final survey or graphic description providing the certificate prescribed by s. 718.104(4)(e), and shall deposit with the clerk the sum of money specified in the estimate.

(b) The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of s. 718.104(4)(e). At that time, the clerk shall pay to the person presenting the amendment to the declaration the sum of money deposited, without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents.

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) within 5 years after the date the declaration was originally recorded, the clerk may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the

clerk shall disburse the money to the Division of Florida Condominiums, Timeshares, and Mobile Homes for deposit in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

(5) When a declaration of condominium is recorded pursuant to this section, a certificate or receipted bill shall be filed with the clerk of the circuit court in the county where the property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-340; s. 3, ch. 90-151; s. 852, ch. 97-102; s. 1, ch. 99-350; s. 46, ch. 2008-240; s. 2, ch. 2013-122.

**718.106 Condominium parcels; appurtenances; possession and enjoyment.—**

(1) A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.

(2) There shall pass with a unit, as appurtenances thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration, including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted pursuant to the provisions contained therein. Amendments to declarations of condominium providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4). However, in order to be effective, the transfer of use rights with respect to limited common elements must be effectuated in conformity with the procedures set forth in the declaration as originally recorded or as amended under the procedures provided therein. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Membership in the association designated in the declaration, with the full voting rights appertaining thereto.

(e) Other appurtenances as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his or her unit, subject to the provisions of s. 718.111(5). He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

(4) When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing in this subsection shall interfere with the access rights of the unit owner as a

landlord pursuant to chapter 83. The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners.

(5) A local government may not adopt an ordinance or regulation that prohibits condominium unit owners or their guests, licensees, or invitees from pedestrian access to a public beach contiguous to a condominium property, except where necessary to protect public health, safety, or natural resources. This subsection does not prohibit a governmental entity from enacting regulations governing activities taking place on the beach.

**History.**—s. 1, ch. 76-222; s. 3, ch. 84-368; s. 4, ch. 90-151; s. 5, ch. 94-350; s. 853, ch. 97-102; s. 50, ch. 2000-302; s. 6, ch. 2002-27; s. 2, ch. 2007-173.

#### **718.107 Restraint upon separation and partition of common elements.—**

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.

(2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units are undivided, and no action for partition of the common elements shall lie.

**History.**—s. 1, ch. 76-222.

#### **718.108 Common elements.—**

(1) “Common elements” includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

**History.**—s. 1, ch. 76-222.

#### **718.1085 Certain regulations not to be retroactively applied.—**

Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium that meets the definition of “housing for older persons” in s. 760.29(4)(b)3. to comply with requirements relating to handrails and guardrails if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting in common areas in a high-rise building. For the purposes of this section, the term “high-rise building” means a building that is greater than 75 feet in

height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable level. For the purposes of this section, the term “common areas” means stairwells and exposed, outdoor walkways and corridors. In no event shall the local authority having jurisdiction require retrofitting of common areas with handrails and guardrails before the end of 2014.

(1) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association’s vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(2) As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

**History.**—s. 1, ch. 2004-80.

#### **718.109 Legal description of condominium parcels.—**

Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

**History.**—s. 1, ch. 76-222.

#### **718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.**

(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined

through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision \_\_\_\_ for present text."

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104, 718.403, and 718.504(6), (7), and (9) without a vote of the unit owners and any rights the developer may have in the declaration to amend without consent of the unit owners which shall be limited to matters other than those under subsections (4) and (8), shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. An amendment by the developer must be evidenced in writing, but a certificate of the association is not required. The developer of a timeshare condominium may reserve specific rights in the declaration to amend the declaration without the consent of the unit owners.

(3) An amendment of a declaration is effective when properly recorded in the public records of the county where the declaration is recorded.

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

(5) If it appears that through a scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements

which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fails to equal 100 percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners.

(6) The common elements designated by the declaration may be enlarged by an amendment to the declaration. The amendment must describe the interest in the property and must submit the property to the terms of the declaration. The amendment must be approved and executed as provided in this section. The amendment divests the association of title to the land and vests title in the unit owners as part of the common elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the unit owned by them.

(7) The declarations, bylaws, and common elements of two or more independent condominiums of a single complex may be merged to form a single condominium, upon the approval of such voting interest of each condominium as is required by the declaration for modifying the appurtenances to the units or changing the proportion or percentages by which the owners of the parcel share the common expenses and own the common surplus; upon the approval of all record owners of liens; and upon the recording of new or amended articles of incorporation, declarations, and bylaws.

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) If there is an omission or error in a declaration, or in any other document required by law to establish the condominium, the association may correct the error or omission by an amendment to the declaration or to the other document required to create a condominium in the manner provided in the declaration to amend the declaration or, if none is provided, by vote of a majority of the voting interests of the condominium. The amendment is effective when passed and approved and a certificate of amendment is executed and recorded as provided in subsections (2) and (3). This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, and the omission or error

would affect the valid existence of the condominium, the circuit court may entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, the declaration and other documents will effectively create a condominium, as of the date the declaration was recorded, regardless of whether the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters:

1. Those matters described in subsections (4) and (8).

2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

(12)(a) With respect to an existing multicondominium association, any amendment to change the fractional or percentage share of liability for the common expenses of the association and ownership of the common surplus of the association must be approved by at least a majority of the total voting interests of each condominium operated by the association unless the declarations of all condominiums operated by the association uniformly require approval by a greater percentage of the voting interests of each condominium.

(b) Unless approval by a greater percentage of the voting interests of an existing multicondominium association is expressly required in the declaration of an existing condominium, the declaration may be amended upon approval of at least a majority of the total voting interests of each condominium operated by the multicondominium association for the purpose of:

1. Setting forth in the declaration the formula currently utilized, but not previously stated in the declaration, for determining the percentage or fractional shares of liability for the common expenses of the multicondominium association and ownership of the common surplus of the multicondominium association.

2. Providing for the creation or enlargement of a multicondominium association by the merger or consolidation of two or more associations and changing the name of the association, as appropriate.

(13) An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

(14) Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under paragraph (1)(a), and shall not be considered an amendment pursuant to subsection (4). This is a clarification of existing law.

**History.**—s. 1, ch. 76-222; s. 8, ch. 77-221; s. 6, ch. 77-222; s. 5, ch. 78-328; s. 2, ch. 78-340; s. 4, ch. 84-368; s. 5, ch. 90-151; s. 3, ch. 91-103; ss. 2, 5, ch. 91-426; s. 51, ch. 2000-302; s. 7, ch. 2002-27; s. 24, ch. 2004-345; s. 1, ch. 2004-353; s. 3, ch. 2007-173; s. 8, ch. 2010-174; s. 3, ch. 2013-122.

### **718.111 The association.—**

#### **(1) CORPORATE ENTITY.—**

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to s. 718.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in

connection with trade fairs or education programs. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) **POWERS AND DUTIES.**—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws and part I of chapter 607 and chapter 617, as applicable.

(3) **POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED.**—The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving

the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(4) **ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.**—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

(5) **RIGHT OF ACCESS TO UNITS.**—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned unit for the benefit of the association to

offset against the rental income the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney fees.

(6) **OPERATION OF CONDOMINIUMS CREATED PRIOR TO 1977.**—Notwithstanding any provision of this chapter, an association may operate two or more residential condominiums in which the initial condominium declaration was recorded prior to January 1, 1977, and may continue to so operate such condominiums as a single condominium for purposes of financial matters, including budgets, assessments, accounting, record-keeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium or in the bylaws. An association for such condominiums may also provide for consolidated financial operation as described in this section either by amending its declaration pursuant to s. 718.110(1)(a) or by amending its bylaws and having the amendment approved by not less than two-thirds of the total voting interests. Notwithstanding any provision in this chapter, common expenses for residential condominiums in such a project being operated by a single association may be assessed against all unit owners in such project pursuant to the proportions or percentages established therefor in the declarations as initially recorded or in the bylaws as initially adopted, subject, however, to the limitations of ss. 718.116 and 718.302.

(7) **TITLE TO PROPERTY.**—

(a) The association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of its members. The power to acquire personal property shall be exercised by the board of administration. Except as otherwise permitted in subsections (8) and (9) and in s. 718.114, no association may acquire, convey, lease, or mortgage association real property except in the manner provided in the declaration, and if the declaration does not specify the procedure, then approval of 75 percent of the total voting interests shall be required.

(b) Subject to the provisions of s. 718.112(2)(m), the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(8) **PURCHASE OF LEASES.**—The association has the power to purchase any land or recreation lease, subject to the same manner of approval as in s. 718.114 for the acquisition of leaseholds.

(9) **PURCHASE OF UNITS.**—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure.

(10) EASEMENTS.—Unless prohibited by the declaration, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the common elements or association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s. 718.104(4)(n) or the powers enumerated in subsection (3).

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.

1. An association or group of associations may provide adequate property insurance through a self-insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate property insurance coverage for a group of at least three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. A policy or program providing such coverage may not be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval must include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners before execution of the agreement by a condominium association.

3. When determining the adequate amount of property insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show that despite such failure, they have made their best efforts to maintain the required coverage.

(c) Policies may include deductibles as determined by the board.

1. The deductibles must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112(2)(e).

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection.

(e) The declaration of condominium as originally recorded, or as amended pursuant to procedures provided therein, may provide that condominium property consisting of freestanding buildings comprised of no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

(f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).

3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including

curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

(g) A condominium unit owner policy must conform to the requirements of s. 627.714.

1. All reconstruction work after a property loss must be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner must obtain all required governmental permits and approvals before commencing reconstruction.

2. Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, or for which the unit owner is responsible under paragraph (j), and the cost of any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment and may be collected in the manner provided for the collection of assessments pursuant to s. 718.116.

3. A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate the condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance must be stated in the association budget. The amendments must be recorded as required by s. 718.110.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(i) The association may amend the declaration of condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the declaration of condominium to the coverage requirements of this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss

pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(k) An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions of paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

(l) In a multicondominium association that has not consolidated its financial operations under subsection (6), any condominium operated by the association may opt out of the provisions of paragraph (j) with the approval of a majority of the total voting interests in that condominium. Such vote may be approved by the voting interests without regard to any mortgagee consent requirements.

(m) Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses as described in paragraph (j) must record a

notice setting forth the date of the opt-out vote and the page of the official records book on which the declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required in paragraphs (k) and (l), and notice thereof shall be recorded in the official records.

(n) The association is not obligated to pay for any reconstruction or repair expenses due to property loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

(o) The provisions of this subsection shall not apply to timeshare condominium associations. Insurance for timeshare condominium associations shall be maintained pursuant to s. 721.165.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with 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.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records must be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) 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:

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.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

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

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the 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. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

(14) COMMINGLING.—All funds collected by an association shall be maintained separately in the

association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. This subsection does not prohibit a multicondominium association from commingling the operating funds of separate condominiums or the reserve funds of separate condominiums. Furthermore, for investment purposes only, a multicondominium association may commingle the operating funds of separate condominiums with the reserve funds of separate condominiums. A manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of a community association as defined in s. 468.431.

**History.**—s. 1, ch. 76-222; s. 2, ch. 78-340; ss. 2, 3, 5, ch. 79-314; s. 1, ch. 80-323; s. 1, ch. 81-225; s. 1, ch. 82-199; s. 5, ch. 84-368; s. 5, ch. 86-175; s. 2, ch. 87-46; s. 4, ch. 87-117; s. 6, ch. 90-151; s. 4, ch. 91-103; ss. 3, 5, ch. 91-426; s. 2, ch. 92-49; s. 1, ch. 94-77; s. 231, ch. 94-218; s. 2, ch. 94-336; s. 35, ch. 95-274; s. 854, ch. 97-102; s. 2, ch. 98-322; s. 74, ch. 99-3; s. 52, ch. 2000-302; s. 20, ch. 2001-64; s. 8, ch. 2002-27; s. 4, ch. 2003-14; s. 1, ch. 2004-345; s. 2, ch. 2004-353; s. 37, ch. 2007-1; s. 4, ch. 2007-80; s. 6, ch. 2008-28; ss. 1, 3, ch. 2008-240; s. 87, ch. 2009-21; s. 9, ch. 2010-174; s. 49, ch. 2011-4; s. 2, ch. 2011-196; s. 4, ch. 2013-122; s. 2, ch. 2013-188; s. 8, ch. 2014-133; s. 69, ch. 2014-209; s. 2, ch. 2015-97.

### 718.112 Bylaws.—

#### (1) GENERALLY.—

(a) The operation of the association shall be governed by the articles of incorporation if the association is incorporated, and the bylaws of the association, which shall be included as exhibits to the recorded declaration. If one association operates more than one condominium, it shall not be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each declaration after the first, provided that in each case where the articles and bylaws are not so recorded, the declaration expressly incorporates them by reference as exhibits and identifies the book and page of the public records where the first declaration to which they were attached is recorded.

(b) No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

#### (a) Administration.—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which case in a not-for-profit corporation the board shall consist of not fewer than three members. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a

treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days after its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

#### (b) Quorum; voting requirements; proxies.—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners in a residential condominium may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners.

Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members in a residential condominium. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association or a nonresidential condominium association.

13. A proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given. Each proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present. A speaker must be used so that the conversation of such members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be

mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *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.

2. 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 or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. 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 residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the

condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically

transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 ½ inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this 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.

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) *Budget meeting.*—

1. Any meeting at which a proposed annual budget of an association will be considered by the board or unit owners shall be open to all unit owners. At least 14 days prior to such a meeting, the board shall hand deliver to each unit owner, mail to each unit owner at the address last furnished to the association by the unit owner, or electronically transmit to the location furnished by the unit owner for that purpose a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the association.

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Unit owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

c. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the

association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper

voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

(g) *Assessments.*—The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

(h) *Amendment of bylaws.*—

1. The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by the owners of not less than two-thirds of the voting interests.

2. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: “Substantial rewording of bylaw. See bylaw \_\_\_\_ for present text.”

3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

(i) *Transfer fees.*—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the

declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month’s rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at

the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) *Arbitration.*—There shall be a provision for mandatory nonbinding arbitration as provided for in s. 718.1255 for any residential condominium.

(l) *Certificate of compliance.*—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety

code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system before January 1, 2020. By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s.

553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

(m) *Common elements; limited power to convey.*—

1. With respect to condominiums created on or after October 1, 1994, the bylaws shall include a provision granting the association a limited power to convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

2. In any case where the bylaws are silent as to the association's power to convey common elements as described in subparagraph 1., the bylaws shall be deemed to include the provision described in subparagraph 1.

(n) *Director or officer delinquencies.*—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

(o) *Director or officer offenses.*—A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(3) **OPTIONAL PROVISIONS.**—The bylaws as originally recorded or as amended under the procedures provided therein may provide for the following:

(a) A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.

(b) Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.

(c) Provisions for giving notice by electronic transmission in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.

(d) Other provisions which are not inconsistent with this chapter or with the declaration, as may be desired.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 5, ch. 77-221; ss. 3, 4, ch. 77-222; s. 1, ch. 78-340; s. 6, ch. 79-314; s. 2, ch. 80-323; s. 2, ch. 81-225; s. 1, ch. 82-113; s. 4, ch. 82-199; s. 6, ch. 84-368; s. 6, ch. 86-175; s. 2, ch. 88-148; s. 7, ch. 90-151; s. 5, ch. 91-103; ss. 5, 6, ch. 91-426; s. 3, ch. 92-49; s. 3, ch. 94-336; s. 7, ch. 94-350; s. 36, ch. 95-274; s. 2, ch. 96-396; s. 32, ch. 97-93; s. 1773, ch. 97-102; s. 1, ch. 97-301; s. 2, ch. 98-195; s. 3, ch. 98-322; s. 53, ch. 2000-302; s. 21, ch. 2001-64; s. 9, ch. 2002-27; s. 5, ch. 2003-14; s. 4, ch. 2004-345; s. 4, ch. 2004-353; s. 134, ch. 2005-2; s. 7, ch. 2008-28; s. 88, ch. 2009-21; s. 10, ch. 2010-174; s. 3, ch. 2011-196; s. 5, ch. 2013-122; s. 1, ch. 2013-159; s. 3, ch. 2013-188; s. 1, ch. 2014-74; s. 9, ch. 2014-133; s. 3, ch. 2015-97.

**Note.**—As amended by s. 1, ch. 2014-74. For a description of multiple acts in the same session affecting a statutory provision, see preface to the *Florida Statutes*, "Statutory Construction." Subparagraph (2)(b)3. was also amended by s. 9, ch. 2014-133, and that version reads:

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked at any time at the pleasure of the unit owner executing it.

**718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.**—

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

**NOTICE OF INTENT TO  
APPLY FOR RECEIVERSHIP**

YOU ARE HEREBY NOTIFIED that the undersigned owner of a condominium unit in (name of condominium) intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney's fees payable from association funds.

(name and address of petitioning unit owner)

(2) The notice required by subsection (1) must be provided by the unit owner to the association by certified mail or personal delivery, must be posted in a conspicuous place on the condominium property, and must be provided by the unit owner to every other unit owner of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner, except that where a unit owner's address is not publicly available the notice shall be mailed to the unit.

(3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the unit owner may proceed with the petition.

(4) If a receiver is appointed, all unit owners shall be given written notice of such appointment as provided in s. 718.127.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

**History.**—s. 1, ch. 81-185; s. 8, ch. 2008-28; s. 1, ch. 2008-202.

**718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.**—

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions. This paragraph is intended to clarify existing law and applies to associations existing on October 1, 2008.

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required. This paragraph is intended to clarify existing

law and applies to associations existing on the effective date of this act.

(3) A unit owner shall not do anything within his or her unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the association property or condominium property which is to be maintained by the association.

(4) Any unit owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

(5) Each board of administration of a residential condominium shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium, install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. However, a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the association pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection except upon approval by a majority vote of the voting interests.

(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

(c) The board may operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property and association

property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.

(d) Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.

(6) An association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the unit owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.

(7) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

**History.**—s. 1, ch. 76-222; s. 1, ch. 89-161; s. 8, ch. 90-151; s. 6, ch. 91-103; s. 5, ch. 91-426; s. 4, ch. 92-49; s. 8, ch. 94-350; s. 43, ch. 95-274; s. 855, ch. 97-102; s. 54, ch. 2000-302; s. 10, ch. 2002-27; s. 1, ch. 2003-28; s. 9, ch. 2008-28; s. 26, ch. 2008-191; s. 89, ch. 2009-21; s. 59, ch. 2010-176; s. 4, ch. 2011-196; s. 4, ch. 2013-188; s. 2, ch. 2014-74.

**718.114 Association powers.**—An association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, are a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and

may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

**History.**—s. 1, ch. 76-222; s. 4, ch. 79-314; s. 9, ch. 90-151; s. 1, ch. 91-67; s. 7, ch. 91-103; s. 2, ch. 91-206; s. 5, ch. 91-426; ss. 2, 6, ch. 92-280; s. 1, ch. 93-160; s. 4, ch. 2007-173; s. 3, ch. 2007-228; s. 5, ch. 2011-196; s. 6, ch. 2013-122.

#### **718.115 Common expenses and common surplus.—**

(1)(a) Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided on or after the date control of the association is transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws. Unless the manner of payment or allocation of expenses is otherwise addressed in the declaration of condominium, the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the condominium property by the association, including, but not limited to, fire-safety equipment or water and sewer service where a master meter serves the condominium, shall be common expenses whether or not such items or services are specifically identified as common expenses in the declaration of condominium, articles of incorporation, or bylaws of the association.

(b) The common expenses of a condominium within a multicondominium are the common expenses directly attributable to the operation of that condominium. The common expenses of a multicondominium association do not include the common expenses directly attributable to the operation of any specific condominium or condominiums within the multicondominium. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) The common expenses of a multicondominium association may include categories of expenses related to the property or common elements within a specific condominium in the multicondominium if such property or common elements are areas in which all members of the multicondominium association have use rights or from which all members receive tangible economic benefits. Such common expenses of the association shall be identified in the declaration or bylaws as originally recorded or as amended under the procedures provided therein of each condominium within the multicondominium association. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(d) If provided in the declaration, the cost of communications services as defined in chapter 202, information services, or Internet services obtained pursuant to a bulk contract is a common expense. If the declaration does not provide for the cost of such services as a common expense, the board may enter into such a contract, and the cost of the service will be a common expense. The cost for the services under a bulk rate contract may be allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of common expenses, and any contract entered into before July 1, 1998, in which the cost of the service is not equally divided among all unit owners, may be changed by vote of a majority of the voting interests present at a regular or special meeting of the association, to allocate the cost equally among all units. The contract must be for at least 2 years.

1. Any contract made by the board on or after July 1, 1998, may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever occurs first, following the making of the contract, such contract shall be deemed ratified for the term therein expressed.

2. Such contract must provide, and is deemed to provide if not expressly set forth, that any hearing-impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person, or any unit owner receiving supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Families pursuant to s. 414.31, may discontinue the cable or video service without incurring disconnect fees, penalties, or subsequent service charges, and, as to such units, the owners are not required to pay any common expenses charge related to such service. If fewer than all members of an association share the expenses of cable or video service, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable or video service.

(e) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However, if the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the cost of the installation of the hurricane shutters, impact

glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is not a common expense and shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection appurtenant to the unit. Notwithstanding s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners to maintain, repair, or replace hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection, a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.

(f) Common expenses include the costs of insurance acquired by the association under the authority of s. 718.111(11), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

(g) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.

(2) Except as otherwise provided by this chapter, funds for payment of the common expenses of a condominium shall be collected by assessments against the units in that condominium in the proportions or percentages provided in that condominium's declaration. In a residential condominium, or mixed-use condominium created after January 1, 1996, each unit's share of the common expenses of the condominium and common surplus of the condominium shall be the same as the unit's appurtenant ownership interest in the common elements.

(3) Common surplus is owned by unit owners in the same shares as their ownership interest in the common elements.

(4)(a) Funds for payment of the common expenses of a condominium within a multicondominium shall be collected as provided in subsection (2). Common expenses of a multicondominium association shall be funded by assessments against all unit owners in the association in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

(b) In a multicondominium association, the total common surplus owned by a unit owner consists of that owner's share of the common surplus of the association plus that owner's share of the common surplus of the condominium in which the owner's unit is located, in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 7, ch. 84-368; s. 1, ch. 88-148; s. 11, ch. 90-151; s. 8, ch. 91-103; s. 3, ch. 91-116; ss. 5, 8, ch. 91-426; s. 5, ch. 92-49; s. 9, ch. 94-350; s. 3, ch. 96-396; s. 4, ch. 98-322; s. 55, ch. 2000-302; s. 11, ch. 2002-27; s. 5, ch. 2007-80; s. 10, ch. 2008-28; s. 4, ch. 2008-240; s. 11, ch. 2010-174; s. 40, ch. 2010-209; s. 5, ch. 2013-188; s. 283, ch. 2014-19.

**718.116 Assessments; liability; lien and priority; interest; collection.—**

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the

association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

(f) The provisions of this subsection are intended to clarify existing law, and shall not be available in any case where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage. Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

(g) For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of \$25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable

notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(4) If the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, administrative late fees, and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association) You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_, (year), and recorded in Official Records Book \_\_\_\_ at Page \_\_\_\_, of the public records of \_\_\_\_ County, Florida, and that the time within which you may file suit

to enforce your lien is limited to 90 days from the date of service of this notice. Executed this \_\_\_\_ day of \_\_\_\_, (year).

Signed: (Owner or Attorney)

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of \$\_\_\_\_, hereby waives and releases its lien and right to claim a lien for unpaid assessments through \_\_\_\_, (year), recorded in the Official Records Book \_\_\_\_ at Page \_\_\_\_, of the public records of \_\_\_\_ County, Florida, for the following described real property:

UNIT NO. \_\_\_\_ OF (NAME OF CONDOMINIUM), A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK \_\_\_\_, PAGE \_\_\_\_, OF THE PUBLIC RECORDS OF \_\_\_\_ COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(Signature of Authorized Agent)  
(Print Name)

(Signature of Witness)  
(Print Name)

(Signature of Witness)  
(Print Name)

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_, (year), by (name of person making statement).

(Signature of Notary Public)

(Print, type, or stamp commissioned name of Notary Public)

Personally Known \_\_\_\_ OR Produced \_\_\_\_ as identification.

(6)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the

unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

#### DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the (type of assessment) assessment to (name of association). The association intends to foreclose the lien and collect the unpaid amount within 30 days of this letter being provided to you.

You owe the interest accruing from (month/year) to the present. As of the date of this letter, the total amount due with interest is \$      . All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses, and telephone numbers of association representative).

If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(d) The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(7) A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Within 15 days after receiving a written request therefor from a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel.

(a) Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees.

(c) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate.

(d) The authority to charge a fee for the certificate shall be established by a written resolution adopted by the board or provided by a written management, book-keeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.

(9)(a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

1. If authorized by the declaration, a developer who is offering units for sale may elect to be excused from payment of assessments against those unsold units for a stated period of time after the declaration is recorded. However, the developer must pay common expenses incurred during such period which exceed regular periodic assessments against other unit owners in the same condominium. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a unit in that condominium. If a developer-controlled association has maintained all insurance coverage required by s. 718.111(11)(a), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by



to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of 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.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328; s. 8, ch. 84-368; s. 12, ch. 90-151; s. 9, ch. 91-103; ss. 4, 5, ch. 91-426; s. 6, ch. 92-49; s. 10, ch. 94-350; s. 87, ch. 95-211; s. 856, ch. 97-102; s. 7, ch. 98-322; s. 33, ch. 99-6; s. 1, ch. 2000-201; s. 56, ch. 2000-302; s. 7, ch. 2003-14; s. 6, ch. 2007-80; s. 5, ch. 2008-240; s. 12, ch. 2010-174; s. 6, ch. 2011-196; s. 10, ch. 2014-133; s. 3, ch. 2014-146; s. 89, ch. 2015-2; s. 9, ch. 2015-97.

### **718.117 Termination of condominium.—**

(1) **LEGISLATIVE FINDINGS.**—The Legislature finds that condominiums are created as authorized by statute. In circumstances that may create economic waste, areas of disrepair, or obsolescence of a condominium property for its intended use and thereby lower property tax values, the Legislature further finds that it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination. The Legislature further finds that it is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation. This section applies to all condominiums in this state in existence on or after July 1, 2007.

(2) **TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.**—

(a) Notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or

2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.

(b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units are timeshare units may be terminated only pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail a copy of the proposed plan and a copy of the petition to:

1. If the association has not been dissolved as a matter of law, each member of the board of directors of the association identified in the most recent annual report filed with the Department of State and the registered agent of the association;

2. The managing entity as defined in s. 721.05(22);

3. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or, if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and

4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

The association, if it has not been dissolved as a matter of law, acting as class representative, or the managing entity as defined in s. 721.05(22), any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph. If no party intervenes to contest the proposed plan within 45 days after the filing of the petition, the petitioner may move the court to enter a final judgment to authorize implementation of the plan of termination. If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a

final judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

(3) **OPTIONAL TERMINATION.**—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium. If 10 percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 10 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term “bulk owner” means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner’s former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county

property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner’s former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner’s former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For an original purchaser from the developer who rejects the plan of termination and whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the fair market value for the unit owner rejecting the plan shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term “fair market value” means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit’s share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit’s share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 20 percent or

more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination.

(5) MORTGAGE LIENHOLDERS.—Notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided in subsection (16). At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

(6) POWERS IN CONNECTION WITH TERMINATION.—The approval of the plan of termination does not terminate the association. It shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in the declaration or bylaws, after approval of the plan the board shall:

(a) Employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs.

(b) Conduct the affairs of the association as necessary for the liquidation or termination.

(c) Carry out contracts and collect, pay, and settle debts and claims for and against the association.

(d) Defend suits brought against the association.

(e) Sue in the name of the association for all sums due or owed to the association or to recover any of its property.

(f) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes.

(g) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of

the association, and execute bills of sale and deeds of conveyance in the name of the association.

(h) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association.

(i) Contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

(7) NATURAL DISASTERS.—

(a) If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the circuit court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the association after a hearing following notice to such persons as the court directs. Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver. If a receiver is appointed, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

(b) The receiver shall have all powers given to the board pursuant to the declaration, bylaws, and subsection (6), and any other powers that are necessary to conclude the affairs of the association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order. The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(a) The association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the association, receivership, or trusteeship and provide copies of the report by regular mail to the unit owners and lienors at the mailing address provided to the association by the unit owners and the lienors.

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j).

(c) The lienors of an association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the

plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 18 months after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(10) **PLAN OF TERMINATION; REQUIRED PROVISIONS.—**The plan of termination must specify:

(a) The name, address, and powers of the termination trustee.

(b) A date after which the plan of termination is void if it has not been recorded.

(c) The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which shall be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided in the declaration.

(d) The interests of the respective unit owners in any proceeds from the sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12). If, pursuant to the plan of termination, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.

(e) Any interests of the respective unit owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may

apportion those proceeds pursuant to any method prescribed in subsection (12).

(11) **PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—**

(a) Unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess that portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and conditions of possession. In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) **ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—**

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium

property, the plan of termination may require separate valuations for the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(13) **TERMINATION TRUSTEE.**—The association shall serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the board pursuant to the declaration, bylaws, and subsection (6). If the association is not the termination trustee, the trustee's powers shall be coextensive with those of the association to the extent not prohibited in the plan of termination or the order of appointment. If the association is not the termination trustee, the association shall transfer any association property to the trustee. If the association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the association.

(14) **TITLE VESTED IN TERMINATION TRUSTEE.** If termination is pursuant to a plan of termination under subsection (2) or subsection (3), title to the condominium property being terminated vests in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(15) **NOTICE.**—

(a) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.

(b) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration pursuant to s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(b) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a unit owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs.

(c) The proceeds from any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets shall be distributed in the following priority:

1. To pay the reasonable termination trustee's fees and costs and accounting fees and costs.

2. To lienholders of liens recorded prior to the recording of the declaration.

3. To purchase-money lienholders on units to the extent necessary to satisfy their liens; however, the distribution may not exceed a unit owner's share of the proceeds.

4. To lienholders of liens of the association which have been consented to under s. 718.121(1).

5. To creditors of the association, as their interests appear.

6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor as provided in paragraph (b).

7. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

8. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their

order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

(d) After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(e) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to paragraph (c).

(f) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

(18) **ASSOCIATION STATUS.**—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) **CREATION OF ANOTHER CONDOMINIUM.** The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium by the termination trustee, or the trustee's successor in interest, for the terminated property or any portion thereof. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

(20) **EXCLUSION.**—This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7).

**History.**—s. 1, ch. 76-222; s. 4, ch. 88-148; s. 47, ch. 95-274; s. 3, ch. 98-195; s. 57, ch. 2000-302; s. 1, ch. 2007-226; s. 11, ch. 2008-28; s. 2, ch. 2008-202; s. 6, ch. 2008-240; s. 13, ch. 2010-174; s. 7, ch. 2011-196; s. 11, ch. 2014-133; s. 1, ch. 2015-175.

**718.118 Equitable relief.**—In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

**History.**—s. 1, ch. 76-222.

#### **718.119 Limitation of liability.**—

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the declaration, and bylaws.

(2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his or her pro rata share of that liability in the same percentage as his or her interest in the common elements, and then in no case shall that liability exceed the value of his or her unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners, and they shall have the right to intervene and defend.

**History.**—s. 1, ch. 76-222; s. 6, ch. 77-221; s. 5, ch. 77-222; s. 857, ch. 97-102.

#### **718.120 Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates.**—

(1) Ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. No ad valorem tax, benefit tax, or special assessment, including those made by special districts, drainage districts, or water management districts, may be separately assessed against recreational facilities or other common elements if such facilities or common elements are owned by the condominium association or are owned jointly by the owners of the condominium parcels. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, upon foreclosure of an assessment, a certificate of lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Condominium property divided into fee timeshare real property shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

**History.**—s. 1, ch. 76-222; s. 58, ch. 82-226; s. 1, ch. 84-261; s. 217, ch. 85-342; s. 4, ch. 91-116.

#### **718.121 Liens.**—

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature are valid against the condominium property as a whole except with the unanimous consent

of the unit owners. During this period, liens may arise or be created only against individual condominium parcels.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his or her condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his or her condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit \_\_\_\_ of (name of association)

The following amounts are currently due on your account to (name of association), and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due (dates)	\$ ____.
Late fee, if applicable	\$ ____.
Interest through (dates) *	\$ ____.
Certified mail charges	\$ ____.
Other costs	\$ ____.
TOTAL OUTSTANDING	\$ ____.

\*Interest accrues at the rate of \_\_\_\_ percent per annum.

History.—s. 1, ch. 76-222; s. 26, ch. 90-109; s. 858, ch. 97-102; s. 12, ch. 2008-28; s. 3, ch. 2008-202; s. 4, ch. 2014-146.

718.122 Unconscionability of certain leases; rebuttable presumption.—

(1) A lease pertaining to use by condominium unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners, other than the developer, to represent their interests;

(b) The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

(c) The lease requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

(d) The lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

(e) The lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 21 years or more;

(f) The lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of a lien upon individual condominium units of the condominium to secure claims for rent;

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved, provided that, for purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

(h) The lease provides for a periodic rental increase; and

(i) The lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease.

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and

circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(3) Any provision of the Florida Statutes to the contrary notwithstanding, neither the statute of limitations nor laches shall prohibit unit owners from maintaining a cause of action under the provisions of this section.

*History.*—s. 3, ch. 77-221; s. 11, ch. 94-350.

#### **718.1224 Prohibition against SLAPP suits.—**

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or “SLAPP suits,” as they are typically referred to, have occurred when association members are sued by individuals, business entities, or governmental entities arising out of a condominium unit owner’s appearance and presentation before a governmental entity on matters related to the condominium association. However, it is the public policy of this state that governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in the state’s institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, and ensure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term “governmental entity” means the state, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a

condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) A condominium unit owner sued by a governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity’s, business organization’s, or individual’s lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner’s motion, which shall be held at the earliest possible time after the filing of the governmental entity’s, business organization’s, or individual’s response. The court may award the condominium unit owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity’s, individual’s, or business organization’s violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney’s fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(4) Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

*History.*—s. 13, ch. 2008-28.

#### **718.1225 Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.—**

It is the intent of the Legislature that the provisions of Title VI of Pub. L. No. 96-399, other than the exceptions stated in s. 611 of that act, shall not apply in this state.

*History.*—s. 6, ch. 82-199.

#### **718.123 Right of owners to peaceably assemble.**

(1) All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners in the condominium or condominiums served thereby and their invited guests for the use intended for such common elements, common areas, and recreational facilities, subject to the provisions of s. 718.106(4). The entity or entities responsible for the operation of the common elements, common areas, and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. No entity or entities shall unreasonably restrict any unit owner’s right to peaceably assemble or right to invite public officers or candidates for public

office to appear and speak in common elements, common areas, and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any condominium document or rule which operates to deprive the owner of such rights.

**History.**—s. 1, ch. 77-222; s. 262, ch. 79-400; s. 2, ch. 81-185; s. 13, ch. 90-151.

**718.1232 Cable television service; resident's right to access without extra charge.**—No resident of any condominium dwelling unit, whether tenant or owner, shall be denied access to any available franchised or licensed cable television service, nor shall such resident or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single-family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

**History.**—s. 16, ch. 81-185.

**718.124 Limitation on actions by association.** The statute of limitations for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

**History.**—s. 9, ch. 77-222; s. 263, ch. 79-400.

**718.125 Attorney's fees.**—If a contract or lease between a condominium unit owner or association and a developer contains a provision allowing attorney's fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney's fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

**History.**—s. 9, ch. 78-340.

**718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.**—

(1) **DEFINITIONS.**—As used in this section, the term “dispute” means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

“Dispute” does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) **VOLUNTARY MEDIATION.**—Voluntary mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) **LEGISLATIVE FINDINGS.**—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney's fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) **MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.**—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation 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. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, 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.

(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.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be 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.

(5) **DISPUTES INVOLVING ELECTION IRREGULARITIES.**—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division's rules for recall arbitration disputes.

(6) **APPLICABILITY.**—This section does not apply to a nonresidential condominium unless otherwise specifically provided for in the declaration of the nonresidential condominium.

**History.**—s. 4, ch. 82-199; s. 4, ch. 85-60; s. 10, ch. 91-103; s. 5, ch. 91-426; s. 7, ch. 92-49; s. 232, ch. 94-218; s. 12, ch. 94-350; s. 37, ch. 95-274; s. 859, ch. 97-102; s. 2, ch. 97-301; s. 12, ch. 2002-27; s. 14, ch. 2008-28; s. 47, ch. 2008-240; s. 3, ch. 2014-74; s. 2, ch. 2015-175.

**718.1256 Condominiums as residential property.**—For the purpose of property and casualty insurance risk classification, condominiums shall be classed as residential property.

**History.**—s. 23, ch. 94-350.

**718.1265 Association emergency powers.—**

(1) To the extent allowed by law and unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with the provisions of s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may, but is not required to, exercise the following powers:

(a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium property or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated as provided in this paragraph.

(b) Cancel and reschedule any association meeting.

(c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.

(d) Relocate the association's principal office or designate alternative principal offices.

(e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit

owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

**History.**—s. 15, ch. 2008-28.

**718.127 Receivership notification.**—Upon the appointment of a receiver by a court for any reason relating to a condominium association, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

**History.**—s. 16, ch. 2008-28; s. 4, ch. 2008-202.

**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.

**History.**—s. 4, ch. 2015-97.

## PART II

### RIGHTS AND OBLIGATIONS OF DEVELOPERS

718.202 Sales or reservation deposits prior to closing.

718.203 Warranties.

**718.202 Sales or reservation deposits prior to closing.**—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments which are in excess of the 10 percent of the sale price described in subsection (1) and which have been received prior to completion of construction by the developer from the buyer on a contract for purchase of a condominium parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend

conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) The term "completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) The failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection. The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. The developer shall maintain separate records for each condominium or proposed condominium for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an escrow account, deposits of funds into escrow, and withdrawal of funds from escrow is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds in an escrow account is prima facie evidence of an intentional and purposeful violation of this section.

(8) Every escrow account required by this section shall be established with a bank; a savings and loan association; an attorney who is a member of The Florida Bar; a real estate broker registered under chapter 475; a title insurer authorized to do business in this state, acting through either its employees or a title insurance agent licensed under chapter 626; or any financial lending institution having a net worth in excess of \$5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Every escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent. Escrow funds may be invested only in securities of the United States or an agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

(9) Any developer who is subject to the provisions of this section is not subject to the provisions of s. 501.1375.

(10) Nothing in this section shall be construed to require any filing with the division in the case of condominiums other than residential condominiums.

(11) All funds deposited into escrow pursuant to subsection (1) or subsection (2) may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, the escrow agent must maintain separate accounting records for each purchaser and for amounts separately covered under subsections (1) and (2) and, if applicable, released to the developer pursuant to subsection (3). Separate accounting by the escrow agent of the escrow funds constitutes compliance with this section even if the funds are held by the escrow agent in a single escrow account. It is the intent of this subsection to clarify existing law.

**History.**—s. 1, ch. 76-222; s. 7, ch. 79-314; s. 3, ch. 80-323; s. 3, ch. 81-185; s. 9, ch. 84-368; s. 5, ch. 87-117; s. 14, ch. 90-151; s. 860, ch. 97-102; s. 14, ch. 2010-174.

### 718.203 Warranties.—

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor, and all subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) “Completion of a building or improvement” means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

(7) Residential condominiums may be covered by an insured warranty program underwritten by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter; to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-221; s. 8, ch. 77-222; s. 3, ch. 78-340; s. 9, ch. 79-314; s. 11, ch. 91-103; s. 5, ch. 91-426; s. 8, ch. 92-49; s. 861, ch. 97-102; s. 4, ch. 2015-165.

## PART III

## RIGHTS AND OBLIGATIONS OF ASSOCIATION

- 718.301 Transfer of association control; claims of defect by association.
- 718.302 Agreements entered into by the association.
- 718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.
- 718.3026 Contracts for products and services; in writing; bids; exceptions.
- 718.303 Obligations of owners and occupants; remedies.

**718.301 Transfer of association control; claims of defect by association.—**

(1) If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of

developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of an election for the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer or an officer or agent of the

developer as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created prior to the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.

(g) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association

property which the developer had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year prior to the date the unit owners other than the developer took control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

(5) If, during the period prior to the time that the developer relinquishes control of the association pursuant to subsection (4), any provision of the Condominium Act or any rule promulgated thereunder is violated by the association, the developer is responsible for such violation and is subject to the administrative action provided in this chapter for such violation or violations and is liable for such violation or violations to third parties. This subsection is intended to clarify existing law.

(6) Prior to the developer relinquishing control of the association pursuant to subsection (4), actions taken by

members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

(7) In any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chapter 455, chapter 471, chapter 481, chapter 489, or chapter 633, such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

(8) The division has authority to adopt rules pursuant to the Administrative Procedure Act to ensure the efficient and effective transition from developer control of a condominium to the establishment of a unit-owner controlled association.

**History.**—s. 1, ch. 76-222; s. 7, ch. 77-221; s. 10, ch. 79-314; s. 264, ch. 79-400; s. 4, ch. 81-185; s. 10, ch. 84-368; s. 3, ch. 88-148; s. 15, ch. 90-151; s. 12, ch. 91-103; s. 5, ch. 91-426; s. 9, ch. 92-49; s. 862, ch. 97-102; s. 4, ch. 98-195; s. 1, ch. 2005-192; s. 17, ch. 2008-28; s. 15, ch. 2010-174; s. 7, ch. 2013-122; s. 165, ch. 2014-17.

### **718.302 Agreements entered into by the association.—**

(1) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer:

(a) If the association operates only one condominium and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the voting interests in the condominium other than the voting interests owned by the developer.

(b) If the association operates more than one condominium and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the voting interests in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the condominium other than the voting interests owned by

the developer. No grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one condominium, and operated by more than one association, may be canceled except pursuant to paragraph (d).

(c) If the association operates more than one condominium and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all condominiums operated by the association other than the voting interests owned by the developer.

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer.

(2) Any grant or reservation made by a declaration, lease, or other document, or any contract made by the developer or association prior to the time when unit owners other than the developer elect a majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

(3) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall not be in conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(6) Any action to compel compliance with the provisions of this section or of s. 718.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 718.301, the prevailing party is entitled to recover reasonable attorney's fees.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 11, ch. 79-314; s. 11, ch. 84-368; s. 43, ch. 86-175; s. 863, ch. 97-102.

**718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—**

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(f) Discloses any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

(4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable television operators; retail store operators; businesses; restaurants; or similar vendors.

**History.**—s. 5, ch. 78-340; s. 12, ch. 79-314; s. 7, ch. 86-175; s. 18, ch. 2008-28.

**718.3026 Contracts for products and services; in writing; bids; exceptions.—**Associations with 10 or fewer units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association on behalf of any condominium operated by the association in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2)(a) Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to the provisions of this section.

(b) Nothing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section shall not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained herein shall excuse a party contracting to provide maintenance or management services from compliance with s. 718.3025.

(3) As to any contract or other transaction between an association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested:

(a) The association shall comply with the requirements of s. 617.0832.

(b) The disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting.

(c) Approval of the contract or other transaction shall require an affirmative vote of two-thirds of the directors present.

(d) At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. Should the members cancel the contract, the association shall only be liable for the reasonable value of goods and services provided up to the time of cancellation and shall not be liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

**History.**—s. 13, ch. 91-103; s. 5, ch. 91-426; s. 10, ch. 92-49; s. 44, ch. 95-274; s. 19, ch. 2008-28.

### **718.303 Obligations of owners and occupants; remedies.—**

(1) Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney'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.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instruction given in writing by a unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant,

licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice 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.

(4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other 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 shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon

full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by a member.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 12, ch. 84-368; s. 16, ch. 90-151; s. 14, ch. 91-103; s. 5, ch. 91-426; s. 11, ch. 92-49; s. 864, ch. 97-102; s. 14, ch. 2003-14; s. 20, ch. 2008-28; s. 16, ch. 2010-174; s. 8, ch. 2011-196; s. 6, ch. 2013-188; s. 10, ch. 2015-97.

## PART IV

### SPECIAL TYPES OF CONDOMINIUMS

- 718.401 Leaseholds.
- 718.4015 Condominium leases; escalation clauses.
- 718.402 Conversion of existing improvements to condominium.
- 718.403 Phase condominiums.
- 718.404 Mixed-use condominiums.
- 718.405 Multicondominiums; multicondominium associations.
- 718.406 Condominiums created within condominium parcels.

#### 718.401 Leaseholds.—

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the

lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased

land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; ss. 6, 13, ch. 78-340; s. 1, ch. 79-166; s. 13, ch. 79-314; ss. 4, 7, ch. 80-323; s. 5, ch. 81-185; s. 13, ch. 84-368; s. 46, ch. 85-62; s. 6, ch. 88-148; s. 1, ch. 88-225; s. 17, ch. 90-151; s. 15, ch. 91-103; s. 1, ch. 91-236; s. 5, ch. 91-426; s. 865, ch. 97-102.

#### **718.4015 Condominium leases; escalation clauses.—**

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to condominiums for which the declaration of condominium was recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to condominiums for which the declaration of condominium was recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 711.231 or former s. 718.401(8); and it prohibits any further escalation of rental fees after October 1, 1988, pursuant to escalation clauses in leases related to condominiums for which the declaration was recorded prior to June 4, 1975.

(3) The provisions of this section do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

**History.**—s. 7, ch. 88-148; s. 2, ch. 88-225; s. 1, ch. 89-164.

**718.402 Conversion of existing improvements to condominium.—**A developer may create a condominium by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter. A developer of a residential condominium must also comply with part VI of this chapter, but the failure to comply will not affect the validity of the condominium.

**History.**—s. 1, ch. 76-222; s. 14, ch. 79-314; s. 3, ch. 80-3; s. 14, ch. 84-368.

#### **718.403 Phase condominiums.—**

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial

phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(a) All phases must be added to the condominium within 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the 7-year period pursuant to paragraph (b).

(b) An amendment to extend the 7-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to s. 718.110(1)(a). An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.

(c) An amendment must describe the time period within which all phases must be added to the condominium, and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

(d) An amendment that extends the 7-year period pursuant to this section is not subject to the requirements of s. 718.110(4).

(2) The original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer, shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium. The plot plan may be modified by the developer as to unit or building types but, in a residential condominium, only to the extent that such changes are described in the declaration. If provided in the declaration, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the decision not to add one or more additional phases. Notice shall be by first-class mail addressed to each owner at the address of his or her unit or at his or her last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he or she fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding other provisions of this chapter, any amendment by the developer which adds any land to the condominium shall be consistent with the provisions of the declaration granting such right and shall contain or provide for the following matters:

(a) A statement submitting the additional land to condominium ownership as an addition to the condominium.

(b) The legal description of the land being added to the condominium.

(c) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the condominium, to ensure that no unit in the condominium, including the additional land, will bear the same designation as any other unit.

(d) A survey of the additional land and a graphic description of the improvements in which any units are located and a plot plan thereof and a certificate of a surveyor, in conformance with s. 718.104(4)(e).

(e) The undivided share in the common elements appurtenant to each unit in the condominium, stated as a percentage or fraction which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original declaration of condominium.

(f) The proportion or percentage of, and the manner of sharing, common expenses and owning common surplus, which for a residential unit must be the same as the undivided share in the common elements.

An amendment which adds phases to a condominium does not require the execution of such amendment or consent thereto by unit owners other than the developer, unless the amendment permits the creation of timeshare estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) An amendment to the declaration of condominium which adds land to the condominium shall be recorded in the public records of the county where the land is located and shall be executed and acknowledged in compliance with the same requirements as for a deed. All persons who have record title to the interest in the land submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the amendment. Every such amendment shall comply with the provisions of s. 718.104(3).

(8) Upon recording the declaration of condominium or amendments adding phases pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(9) Paragraphs (2)(b)-(f) and subsection (8) do not apply to nonresidential condominiums.

**History.**—s. 1, ch. 76-222; s. 7, ch. 78-328; s. 15, ch. 84-368; s. 64, ch. 87-226; s. 18, ch. 90-151; s. 866, ch. 97-102; s. 5, ch. 98-195; s. 58, ch. 2000-302; s. 8, ch. 2013-122; s. 7, ch. 2013-188; s. 4, ch. 2014-74.

**718.404 Mixed-use condominiums.**—When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

(3) In the declaration of condominium for mixed-use condominiums created after January 1, 1996, the ownership share of the common elements assigned to each unit shall be based either on the total square footage of each unit in uniform relationship to the total square footage of each other unit in the condominium or on an equal fractional basis.

(4) The provisions of this section shall not apply to timeshare condominiums.

*History.*—s. 38, ch. 95-274; s. 4, ch. 96-396; s. 5, ch. 2007-173.

#### **718.405 Multicondominiums; multicondominium associations.—**

(1) An association may operate more than one condominium. For multicondominiums created on or after July 1, 2000, the declaration for each condominium to be operated by that association must provide for participation in a multicondominium, in conformity with this section, and disclose or describe:

(a) The manner or formula by which the assets, liabilities, common surplus, and common expenses of the association will be apportioned among the units within the condominiums operated by the association, in accordance with s. 718.104(4)(g) or (h), as applicable.

(b) Whether unit owners in any other condominium, or any other persons, will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium, and, if so, the specific formula by which the other users will share the common expenses related to those facilities or amenities.

(c) Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased by, or dedicated by a recorded plat to the association but which are not included within any condominium operated by the association. The developer may reserve the right to add additional facilities or amenities if the declaration and prospectus for each condominium to be operated by the association contains the following statement in conspicuous type and in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

(d) The voting rights of the unit owners in the election of directors and in other multicondominium association affairs when a vote of the owners is taken, including, but not limited to, a statement as to whether each unit owner will have a right to personally cast his or her own vote in all matters voted upon.

(2) If any declaration requires a developer to convey additional lands or facilities to a multicondominium association and the developer fails to do so within the time specified, or within a reasonable time if none is specified in the declaration, any unit owner or the association may enforce that obligation against the developer or bring an action against the developer for specific performance or for damages that result from the developer's failure or refusal to convey the additional lands or facilities.

(3) The declaration for each condominium to be operated by a multicondominium association may not, at the time of the initial recording of the declaration,

contain any provision with respect to allocation of the association's assets, liabilities, common surplus, or common expenses which is inconsistent with this chapter or the provisions of a declaration for any other condominium then being operated by the multicondominium association.

(4) This section does not prevent or restrict the formation of a multicondominium by the merger or consolidation of two or more condominium associations. Mergers or consolidations of associations shall be accomplished in accordance with this chapter, the declarations of the condominiums being merged or consolidated, and chapter 617. Section 718.110(4) does not apply to amendments to declarations necessary to effect a merger or consolidation. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

*History.*—s. 59, ch. 2000-302; s. 13, ch. 2002-27.

#### **718.406 Condominiums created within condominium parcels.—**

(1) Unless otherwise expressed in the declaration of condominium, if a condominium is created within a condominium parcel, the term:

(a) "Primary condominium" means any condominium that is not a secondary condominium and contains one or more subdivided parcels.

(b) "Primary condominium association" means any entity that operates a primary condominium.

(c) "Primary condominium declaration" means the instrument or instruments by which a primary condominium is created, as they are from time to time amended.

(d) "Secondary condominium" means one or more condominium parcels that have been submitted to condominium ownership pursuant to a secondary condominium declaration.

(e) "Secondary condominium association" means any entity responsible for the operation of a secondary condominium.

(f) "Secondary condominium declaration" means the instrument or instruments by which a secondary condominium is created, as they are from time to time amended.

(g) "Secondary unit" means a unit that is part of a secondary condominium.

(h) "Subdivided parcel" means a condominium parcel in a primary condominium that has been submitted to condominium ownership pursuant to a secondary condominium declaration.

(2) Unless otherwise provided in the primary condominium declaration, if a condominium parcel is a subdivided parcel, the secondary condominium association responsible for operating the secondary condominium upon the subdivided parcel shall act on behalf of all of the unit owners of secondary units in the secondary condominium and shall exercise all rights of the secondary unit owners in the primary condominium association, other than the right of possession of the secondary unit. The secondary condominium association shall designate a representative who shall cast the vote of the subdivided parcel in the primary condominium association and, if no person is designated by the

secondary condominium association to cast such vote, the vote shall be cast by the president of the secondary condominium association or the designee of the president.

(3) Unless otherwise provided in the primary condominium declaration as originally recorded, no secondary condominium may be created upon any condominium parcel in the primary condominium, and no amendment to the primary condominium declaration may permit secondary condominiums to be created upon parcels in the primary condominium, unless the record owners of a majority of the condominium parcels join in the execution of the amendment.

(4) If the primary condominium declaration permits the creation of a secondary condominium and a condominium parcel in the primary condominium is being submitted for condominium ownership to create a secondary condominium upon the primary condominium parcel, the approval of the board of administration of the primary condominium association is required in order to create the secondary condominium on the primary condominium parcel. Unless otherwise provided in the primary condominium declaration, the owners of condominium parcels in the primary condominium that will not be part of the proposed secondary condominium and the holders of liens upon such primary condominium parcels shall not have approval rights regarding the creation of the secondary condominium or the contents of the secondary condominium declaration being submitted. Only the board of administration of the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and the contents of the secondary condominium declaration. In order for the recording of the secondary condominium declaration to be effective to create the secondary condominium, the board of administration of the primary condominium association, the owner of the subdivided parcel, and all holders of liens on the subdivided parcel must execute the secondary condominium declaration for the purpose of evidencing their approval.

(5) An owner of a secondary unit is subject to both the primary condominium declaration and the secondary condominium declaration.

(6) The primary condominium association may provide insurance required by s. 718.111(11) for common elements and other improvements within the secondary condominium if the primary condominium declaration permits the primary condominium association to provide such insurance for the benefit of the condominium property included in the subdivided parcel, in lieu of such insurance being provided by the secondary condominium association.

(7) Unless otherwise provided in the primary condominium declaration, the board of administration of the primary condominium association may adopt hurricane shutter or hurricane protection specifications for each building within which subdivided parcels are located and govern any subdivided parcels in the primary condominium.

(8) Any unit owner of, or holder of a first mortgage on, a secondary unit may register such unit owner's or mortgagee's interest in the secondary unit with the primary condominium association by delivering written notice to the primary condominium association. Once registered, the primary condominium association must provide written notice to such secondary unit owner and his, her, or its first mortgagee at least 30 days before instituting any foreclosure action against the subdivided parcel in which the secondary unit owner and his, her, or its first mortgagee hold an interest for failure of the subdivided parcel owner to pay any assessments or other amounts due to the primary condominium association. A foreclosure action against a subdivided parcel is not effective without an affidavit indicating that written notice of the foreclosure was timely sent to the names and addresses of secondary unit owners and first mortgagees registered with the primary condominium association pursuant to this subsection. The registered secondary unit owner or mortgagee has a right to pay the proportionate amount of the delinquent assessment attributable to the secondary unit in which the registered unit owner or mortgagee holds an interest. Upon such payment, the primary condominium association is obligated to promptly modify or partially release the record of lien on the primary condominium association so that the lien no longer encumbers such secondary unit. Alternatively, a registered secondary unit owner or mortgagee may pay the amount of all delinquent assessments attributed to the subdivided parcel and seek reimbursement for all such amounts paid and all costs incurred from the secondary condominium association, including, without limitation, the costs of collection other than the share allocable to the secondary unit on behalf of which such payment was made.

(9) In the event of a conflict between the primary condominium declaration and the secondary condominium declaration, the primary condominium declaration controls.

(10) All common expenses due to the primary condominium association with respect to a subdivided parcel are a common expense of the secondary condominium association and shall be collected by the secondary condominium association from its members and paid to the primary condominium association.

History.—s. 8, ch. 2013-188.

## PART V

### REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS

718.501	Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.
718.5011	Ombudsman; appointment; administration.
718.5012	Ombudsman; powers and duties.
718.5014	Ombudsman location.
718.50152	Offices.
718.50153	Payment of per diem, mileage, and other expenses to division employees.
718.50154	Seal and authentication of records.

718.50155	Service of process.
718.502	Filing prior to sale or lease.
718.503	Developer disclosure prior to sale; non-developer unit owner disclosure prior to sale; voidability.
718.504	Prospectus or offering circular.
718.505	Good faith effort to comply.
718.506	Publication of false and misleading information.
718.507	Zoning and building laws, ordinances, and regulations.
718.508	Regulation by Division of Hotels and Restaurants.
718.509	Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

**718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—**

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of

persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order

and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines

provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or
2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 77-221; s. 4, ch. 78-323; ss. 4, 12, ch. 78-340; s. 32, ch. 79-4; s. 15, ch. 79-314; s. 1, ch. 81-28; ss. 1, 2, 3, ch. 81-54; s. 4, ch. 81-172; s. 6, ch. 81-185; s. 477, ch. 81-259; ss. 1, 4, ch. 82-46; s. 2, ch. 82-113; ss. 5, 7, ch. 82-199; s. 154, ch. 83-216; s. 16, ch. 84-368; s. 5, ch. 85-60; s. 8, ch. 86-175; s. 18, ch. 87-102; s. 16, ch. 91-103; s. 5, ch. 91-426; s. 12, ch. 92-49; s. 233, ch. 94-218; s. 299, ch. 96-410; s. 1774, ch. 97-102; s. 3, ch. 97-301; s. 221, ch. 98-200; s. 62, ch. 2000-302; s. 1891, ch. 2003-261; s. 21, ch. 2008-28; s. 4, ch. 2008-134; s. 48, ch. 2008-240; s. 90, ch. 2009-21; s. 17, ch. 2010-174.

**718.5011 Ombudsman; appointment; administration.—**

(1) There is created an Office of the Condominium Ombudsman, to be located for administrative purposes within the Division of Florida Condominiums, Timeshares, and Mobile Homes. The functions of the office shall be funded by the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The ombudsman shall be a bureau chief of the division, and the office shall be set within the division in the same manner as any other bureau is staffed and funded.

(2) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

*History.—*s. 6, ch. 2004-345; s. 49, ch. 2008-240; s. 9, ch. 2013-188.

**718.5012 Ombudsman; powers and duties.—**

The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(1) To have access to and use of all files and records of the division.

(2) To employ professional and clerical staff as necessary for the efficient operation of the office.

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these

services, so that the availability of these resources is made known to the largest possible audience.

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.

(6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.

(7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.

(8) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

(9) To assist with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.

(10) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

*History.—*ss. 7, 36, ch. 2004-345; s. 22, ch. 2008-28.

**718.5014 Ombudsman location.—**The ombudsman shall maintain his or her principal office in Leon County on the premises of the division or, if suitable space cannot be provided there, at another place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

*History.—*s. 8, ch. 2004-345.

**718.50152 Offices.—**

(1) The executive offices of the division shall be established and maintained in Tallahassee.

(2) The division may establish and maintain branch offices.

**History.**—s. 6, ch. 63-129; s. 5, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; ss. 1, 7, ch. 76-262; s. 1, ch. 77-457; ss. 5, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 34, ch. 2008-240.

**Note.**—Former s. 478.061; s. 498.009.

**718.50153 Payment of per diem, mileage, and other expenses to division employees.**—The amount of per diem and mileage and expense money paid to employees shall be as provided in s. 112.061, except that the division shall establish by rule the standards for reimbursement of actual verified expenses incurred in connection with an onsite review or investigation.

**History.**—s. 8, ch. 63-129; s. 7, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 5, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 1, ch. 93-190; s. 3, ch. 97-192; s. 35, ch. 2008-240.

**Note.**—Former s. 478.081; s. 498.011.

**718.50154 Seal and authentication of records.** The division shall adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, shall be prima facie evidence of the records in all the courts of this state.

**History.**—s. 9, ch. 63-129; s. 8, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 6, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 36, ch. 2008-240.

**Note.**—Former s. 478.091; s. 498.013.

**718.50155 Service of process.—**

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service may be made and shall be binding upon the defendant or respondent if:

(a) The division, which is acting as the petitioner or plaintiff, immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his or her last known address; and

(b) The division files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over him or her cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or his or her successor which grows out of the conduct and which is brought by the division under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

**History.**—s. 26, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 26, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 581, ch. 97-103; s. 37, ch. 2008-240.

**Note.**—Former s. 478.29; s. 498.057.

**718.502 Filing prior to sale or lease.—**

(1)(a) A developer of a residential condominium or mixed-use condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a

contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(b) A developer may not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules adopted by the division and until the division notifies the developer that the filing is proper and the developer prepares and delivers all documents required by s. 718.503(1)(b) to the prospective buyer.

(c) The division by rule may develop filing, review, and examination requirements and relevant timetables to ensure compliance with the notice and disclosure provisions of this section.

(2)(a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed, a developer shall not offer a contract for purchase of a unit or lease of a unit for more than 5 years. However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of \$250. Reservations shall not be taken on a proposed condominium unless the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a down payment on the purchase price at the time a contract is signed by the purchaser if provided in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase agreement or binding agreement for a lease of more than 5 years.

2. A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase or sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$20 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a condominium shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event, later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to \$100 per filing, with the exact fee to be set by division rule.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he or she filed.

(5) In addition to those disclosures described by ss. 718.503 and 718.504, the division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering.

**History.**—s. 1, ch. 76-222; s. 8, ch. 79-314; s. 7, ch. 81-185; s. 17, ch. 84-368; s. 6, ch. 85-60; s. 19, ch. 87-102; s. 18, ch. 91-103; s. 5, ch. 91-426; s. 39, ch. 95-274; s. 868, ch. 97-102; s. 6, ch. 98-195; s. 50, ch. 2008-240.

**718.503 Developer disclosure prior to sale; non-developer unit owner disclosure prior to sale; voidability.—**

(1) DEVELOPER DISCLOSURE.—

(a) *Contents of contracts.*—Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY

EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. Contain the following caveat in conspicuous type on the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN

**ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.**

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.
2. The documents creating the association.
3. The bylaws.
4. The ground lease or other underlying lease of the condominium.
5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.
6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.
7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.
8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.
9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

(c) *Subsequent estimates; when provided.*—If the closing on a contract occurs more than 12 months after the filing of the offering circular with the division, the developer shall provide a copy of the current estimated operating budget of the association to the buyer at closing, which shall not be considered an amendment that modifies the offering provided any changes to the association's budget from the budget given to the buyer at the time of contract signing were the result of matters beyond the developer's control. Changes in budgets of any master association, recreation association, or club and similar budgets for entities other than the association shall likewise not be considered amendments that modify the offering. It is the intent of this paragraph to clarify existing law.

**(2) NONDEVELOPER DISCLOSURE.—**

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by s. 718.111, and the document entitled "Frequently Asked Questions and Answers" required by s. 718.504. On and after January 1, 2009, the prospective purchaser shall also be entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to maintenance of the condominium property.

5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.

6. Owners' rights to inspect and copy association records and the limitations on such rights.

7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and authority.

8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.

9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.

10. The voting rights of owners.

11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicuous type: "This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association's board of administration prevail over the contents of this publication."

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-328; s. 16, ch. 79-314; s. 4, ch. 80-3; s. 2, ch. 82-199; s. 59, ch. 82-226; s. 18, ch. 84-368; s. 19, ch. 91-103; s. 5, ch. 91-426; s. 14, ch. 92-49; s. 869, ch. 97-102; s. 7, ch. 98-195; s. 5, ch. 98-322; s. 14, ch. 2002-27; s. 10, ch. 2004-345; s. 6, ch. 2004-353; s. 7, ch. 2007-80; s. 24, ch. 2008-28; s. 91, ch. 2009-21.

**718.504 Prospectus or offering circular.**—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled “Frequently Asked Questions and Answers,” which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

- (a) The name of the condominium.
- (b) The following statements in conspicuous type:
  1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.
  2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.
  3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

- (a) Its name and location.
- (b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner’s maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has

the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN;** or

2. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).** Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

- (a) The names of contracting parties.
- (b) The term of the contract.
- (c) The nature of the services included.
- (d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear,

identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER).** Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: **THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM.** Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: **BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM.** Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within

each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:
  - a. Administration of the association.
  - b. Management fees.
  - c. Maintenance.
  - d. Rent for recreational and other commonly used facilities.
  - e. Taxes upon association property.
  - f. Taxes upon leased areas.
  - g. Insurance.
  - h. Security provisions.
  - i. Other expenses.
  - j. Operating capital.
  - k. Reserves.
  - l. Fees payable to the division.
2. Expenses for a unit owner:
  - a. Rent for the unit, if subject to a lease.
  - b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is

not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type: THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17).

(25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with this chapter.

(26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

(27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.

(28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 78-328; s. 17, ch. 79-314; s. 5, ch. 80-3; s. 19, ch. 84-368; s. 7, ch. 85-60; s. 19, ch. 90-151; s. 20, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 92-49; s. 870, ch. 97-102; s. 6, ch. 98-322; s. 61, ch. 2000-302; s. 22, ch. 2001-64; s. 15, ch. 2002-27; s. 8, ch. 2007-80; s. 51, ch. 2008-240.

**718.505 Good faith effort to comply.**—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

**History.**—s. 1, ch. 76-222; s. 871, ch. 97-102.

**718.506 Publication of false and misleading information.**—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract

or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

- (a) The closing of the transaction;
- (b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;
- (c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or
- (d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 718.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

**History.**—s. 1, ch. 76-222; s. 872, ch. 97-102.

**718.507 Zoning and building laws, ordinances, and regulations.**—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the condominium form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is

not located in a municipality, with the governing body of the county in which the land is located.

**History.**—s. 1, ch. 76-222; s. 6, ch. 80-3.

**718.508 Regulation by Division of Hotels and Restaurants.**—In addition to the authority, regulation, or control exercised by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to this act with respect to condominiums, buildings included in a condominium property are subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided in chapter 399.

**History.**—s. 1, ch. 76-222; s. 8, ch. 85-60; s. 235, ch. 94-218; s. 52, ch. 2008-240.

**718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.**—

(1) There is created within the State Treasury the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund to be used for the administration and operation of this chapter and chapters 718, 719, 721, and 723 by the division.

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order shall be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to each category of business covered by the trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses which may be used to determine fees charged by the division. This subsection shall operate pursuant to the provisions of s. 215.20.

**History.**—ss. 10, 32, ch. 79-347; ss. 2, 5, 7, ch. 81-172; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 20, 21, ch. 83-339; ss. 16, 20, ch. 87-102; ss. 8, 33, 34, ch. 88-90; s. 83, ch. 90-132; s. 4, ch. 91-429; s. 53, ch. 2008-240.

**Note.**—Former s. 498.019.

## PART VI

### CONVERSIONS TO CONDOMINIUM

- 718.604 Short title.
- 718.606 Conversion of existing improvements to condominium; rental agreements.
- 718.608 Notice of intended conversion; time of delivery; content.
- 718.61 Notices.
- 718.612 Right of first refusal.
- 718.614 Economic information to be provided.
- 718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.
- 718.618 Converter reserve accounts; warranties.

- 718.62 Prohibition of discrimination against non-purchasing tenants.  
 718.621 Rulemaking authority.  
 718.622 Saving clause.

**718.604 Short title.**—This part shall be known and may be cited as the “Roth Act” in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

**History.**—s. 1, ch. 80-3.

**718.606 Conversion of existing improvements to condominium; rental agreements.**—When existing improvements are converted to ownership as a residential condominium:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days’ written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days’ written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a tenant relocation payment at least equal to 1 month’s rent in consideration for extending

the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days’ written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 718.402(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

**History.**—s. 1, ch. 80-3; s. 20, ch. 84-368.

**718.608 Notice of intended conversion; time of delivery; content.**—

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by (name of developer), the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT.



**718.61 Notices.—**

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

*History.—*s. 1, ch. 80-3.

**718.612 Right of first refusal.—**

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages.

In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

*History.—*s. 1, ch. 80-3; s. 478, ch. 81-259; s. 21, ch. 84-368; s. 873, ch. 97-102.

**718.614 Economic information to be provided.**

The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

*History.—*s. 1, ch. 80-3; s. 10, ch. 85-60; s. 13, ch. 94-350.

**718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.—**

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall prepare a report that discloses the condition of the improvements and the condition of certain components and their current estimated replacement costs as of the date of the report.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.
2. Structure.
3. Fire protection systems.
4. Elevators.

- 5. Heating and cooling systems.
- 6. Plumbing.
- 7. Electrical systems.
- 8. Swimming pool.
- 9. Seawalls, pilings, and docks.
- 10. Pavement and concrete, including roadways, walkways, and parking areas.
- 11. Drainage systems.
- 12. Irrigation systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

- 1. The age of the component as of the date of the report.
- 2. The estimated remaining useful life of the component as of the date of the report.
- 3. The estimated current replacement cost of the component as of the date of the report, expressed:
  - a. As a total amount; and
  - b. As a per-unit amount, based upon each unit's proportional share of the common expenses.
- 4. The structural and functional soundness of the component.

(c) Each unit owner and the association are third-party beneficiaries of the report.

(d) A supplemental report shall be prepared for any structure or component that is renovated or repaired after completion of the original report and prior to the recording of the declaration of condominium. If the declaration is not recorded within 1 year after the date of the original report, the developer shall update the report annually prior to recording the declaration of condominium.

(e) The report may not contain representations on behalf of the development concerning future improvements or repairs and must be limited to the current condition of the improvements.

(4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

**History.**—s. 1, ch. 80-3; s. 22, ch. 84-368; s. 14, ch. 94-350; s. 40, ch. 95-274; s. 5, ch. 96-396; s. 7, ch. 97-301; s. 9, ch. 2007-80.

**718.618 Converter reserve accounts; warranties.—**

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-

conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

Roof Type	Numerator	Denominator
a. Built-up roof without insulation	4	5
b. Built-up roof with insulation	4	5
c. Cement tile roof	45	50
d. Asphalt shingle roof	14	15
e. Copper roof		
f. Wood shingle roof	9	10
g. All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

- 1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or
- 2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

- 1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

(2)(a) The developer shall fund the reserve account required by subsection (1), on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of converter reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds, as provided in this section, is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, it is determined by three-fourths of the voting interests in the condominium to expend the funds for other purposes.

(4) The developer shall establish the reserve account, as provided in this section, in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional converter reserve accounts. The amount of funding shall be the product of the estimated current replacement cost of a component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which is the age of the component in years and the denominator of which is the total estimated life of the component in years.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are

funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential condominium may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 718.503 or s. 718.504, as applicable, with the division prior to the effective date of this law, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part 1.

2. Gives a notice of intended conversion.

(9) This section applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. In such circumstances, s. 718.203 does not apply.

(10) A developer who sells a condominium parcel that is subject to this part shall disclose in conspicuous type in the contract of sale whether the developer has established converter reserve accounts, provided a warranty of fitness and merchantability, or posted a surety bond for purposes of complying with this section.

**History.**—s. 1, ch. 80-3; s. 23, ch. 84-368; s. 20, ch. 90-151; s. 22, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 94-350; s. 2, ch. 2006-145; s. 10, ch. 2007-80.

**718.62 Prohibition of discrimination against nonpurchasing tenants.**—When existing

improvements are converted to condominium, tenants who have not purchased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

**History.**—s. 1, ch. 80-3.

**718.621 Rulemaking authority.**—The division is authorized to adopt rules pursuant to the Administrative Procedure Act to administer and ensure compliance with developers' obligations with respect to condominium conversions concerning the filing and noticing of intended conversion, rental agreement extensions, rights of first refusal, and disclosure and postpurchase protections.

**History.**—s. 8, ch. 98-195.

**718.622 Saving clause.**—

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 718.606, 718.608, and 718.61. Tenants given such notices shall have a right of first refusal as provided by s. 718.612.

(2) The disclosure provided by s. 718.616 and required by ss. 718.503 and 718.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 718.503 and 718.504.

(3) The provisions of s. 718.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I of this chapter, and

2. Gives a notice of intended conversion.

**History.**—s. 13, ch. 80-3.

## PART VII

### DISTRESSED CONDOMINIUM RELIEF

- 718.701 Short title.
- 718.702 Legislative intent.
- 718.703 Definitions.
- 718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.
- 718.705 Board of administration; transfer of control.
- 718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.
- 718.707 Time limitation for classification as bulk assignee or bulk buyer.
- 718.708 Liability of developers and others.

**718.701 Short title.**—This part may be cited as the “Distressed Condominium Relief Act.”

**History.**—s. 18, ch. 2010-174.

**718.702 Legislative intent.**—

(1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.

(2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association due to the resulting shortage of assessment moneys available for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erodes property values. The Legislature finds that individuals and entities within this state and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential successor purchaser having unknown and unquantifiable risks that the potential purchaser is unwilling to accept. As a result, condominium projects stagnate, leaving all parties involved at an impasse and without the ability to find a solution.

(3) The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.

**History.**—s. 18, ch. 2010-174.

**718.703 Definitions.**—As used in this part, the term:

(1) “Bulk assignee” means a person who is not a bulk buyer and who:

(a) Acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707; and

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described

in subsection (2), as set forth in the declaration of condominium or this chapter:

1. By a written instrument recorded as part of or as an exhibit to the deed;
2. By a separate instrument recorded in the public records of the county in which the condominium is located; or
3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2).

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights:

- (a) The right to conduct sales, leasing, and marketing activities within the condominium;
- (b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units; and
- (c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

*History.—*s. 18, ch. 2010-174; s. 9, ch. 2011-196.

**718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—**

(1) A bulk assignee is deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter upon its acquisition of title to units and continuously thereafter, except that it is not liable for:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or
2. Provide implied warranties on any portion of the condominium property except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the period during which the

bulk assignee elects or appoints a majority of the members of the board of administration.

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects or appoints a majority of the members of the board of administration.

(e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

The bulk assignee is responsible only for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the developer obligations described in paragraphs (a)-(e).

(2) A bulk assignee assigned the developer right to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee upon its acquisition of title to the units and continuously thereafter, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving such assignment, or a bulk buyer, does not assume and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments due on or after acquisition of the units in the same manner as all other owners of condominium parcels or as otherwise provided in s. 718.116.

(3) A bulk buyer is liable for the duties and responsibilities of a developer under the declaration and this chapter only to the extent that such duties or responsibilities are expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

- (a) Before the effective date of this part;
- (b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or
- (c) By a person who would be considered an insider under s. 726.102.

(5) An assignment of developer rights to a bulk assignee may be made by a developer, a previous bulk assignee, a mortgagee or assignee who has acquired title to the units and received an assignment of rights, or a court acting on behalf of the developer or the previous bulk assignee if such developer rights are held by the predecessor in title to the bulk assignee. At any particular time, there may not be more than one bulk assignee within a condominium; however, there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights in addition to those rights described in s. 718.703(2), the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located, and any subsequent

purported bulk assignee may still qualify as a bulk buyer.

*History.*—s. 18, ch. 2010-174; s. 10, ch. 2011-196; s. 4, ch. 2013-189.

**718.705 Board of administration; transfer of control.—**

(1) If, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board of administration, for purposes of determining the timing for transfer of control of the board of administration of the association, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

(2) Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee must relinquish control of the association pursuant to s. 718.301 and this part, as if the bulk assignee were the developer.

(3) If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee if some items were or should have been in existence before the bulk assignee's acquisition of the units. In conjunction with the acquisition of units, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected or appointed a majority of the members of the board of administration.

(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section prevails.

(5) Failure of a bulk assignee or bulk buyer to substantially comply with all the requirements in this part results in the loss of any and all protections or exemptions provided under this part.

*History.*—s. 18, ch. 2010-174; s. 11, ch. 2011-196.

**718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—**

(1) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed

by the original developer prepared in accordance with s. 718.504, which must include the form of contract for sale and for lease in compliance with s. 718.503(2);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report did not exist before the acquisition of title by the bulk assignee or bulk buyer, and if accounting records that permit preparation of the required financial information report for that period cannot be obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD BEFORE THE SELLER'S ACQUISITION OF THE UNIT IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE GOOD FAITH EFFORTS OF THE SELLER.

(2) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file with the division and provide to a prospective purchaser or tenant under a lease for a term exceeding 5 years a disclosure statement that includes, but is not limited to:

(a) A description of any of the developer rights that have been assigned to the bulk assignee or bulk buyer;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER; and

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) A bulk assignee, while in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(4) A bulk assignee or a bulk buyer must comply with s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be provided all of the rights and protections contained in s. 718.302 regarding agreements entered into by the association which are under the control of the developer, bulk assignee, or bulk buyer.

(5) Notwithstanding any other provision of this part, a bulk assignee or a bulk buyer is not required to comply with the filing or disclosure requirements of subsections (1) and (2) if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction.

**History.**—s. 18, ch. 2010-174; s. 12, ch. 2011-196.

**718.707 Time limitation for classification as bulk assignee or bulk buyer.**—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2018. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

**History.**—s. 18, ch. 2010-174; s. 13, ch. 2011-196; s. 36, ch. 2012-61; s. 5, ch. 2014-74; s. 13, ch. 2014-133; s. 11, ch. 2015-97.

**718.708 Liability of developers and others.**—An assignment of developer rights to a bulk assignee or bulk buyer does not release the original developer from liabilities under the declaration or this chapter. This part does not limit the liability of the original developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the original developer, unless specifically excluded in this part. This part does not waive, release, compromise, or limit liability established under this chapter except as specifically excluded under this part.

**History.**—s. 18, ch. 2010-174.

**Department  
of  
Business  
and  
Professional  
Regulation**

*Division of Florida  
Condominiums,  
Timeshares,  
And  
Mobile Homes*

*Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida  
32399-1030*

**CHAPTERS 61B-15  
Through 25, 45 and 50**

**FLORIDA ADMINISTRATIVE  
CODE**



Revised March, 2016

**CHAPTER 61B-15  
FORMS AND DEFINITIONS**

61B-15.0011	Definitions for Filings and Documents
61B-15.0012	Forms (Repealed)
61B-15.007	Developer, Defined

**61B-15.0011 Definitions for Filings and Documents.**

For purposes of these rules and Sections 718.502, 718.503 and 718.504, F.S., the following definitions shall apply:

(1) “Documents” means any or all of the documents comprising the “filing” as that term is defined in these rules.

(2) “Days” means calendar days and, in computing any period of time prescribed or allowed for a filing or response, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The term “legal holiday” means those days on which State of Florida government offices are closed for legal holiday as provided by Section 110.117, F.S.

(3) “File” means to submit required documents to the division in the Tallahassee, Florida, office via ground mail, airmail, facsimile, e-mail, or other means, so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

(4) “Filing” means the documents required to be submitted to the division pursuant to Sections 718.502, 718.503 or 718.504, F.S. The documents or filing may be comprised of paper, CD-ROM, facsimile, e-mail, or other media, so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

(5) “Medium” or “media” means the format used to file documents with the division or deliver documents to purchasers. Examples of “media” include: paper, e-mail, facsimile, CD-ROM, and Internet website.

(6) “Offer” means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire an interest in a condominium unit, either proposed or existing, if undertaken for gain or profit.

(7) “Received” or “receipt” by the division refers to the date on which the division or department actually receives a filing or documents related to a filing. If a filing is delivered to the division via facsimile or e-mail, the facsimile or e-mail confirmation sheet shall be evidence of the date on which the division received the filing. If the

filing is delivered to the division via ground mail, airmail, or overnight service, the carrier’s delivery receipt shall be evidence of the date on which the division received the filing. In the absence of any of the foregoing evidence of division receipt, the division will use the earliest department or division date stamp on the filing as the date received.

(8) “Written” means and includes paper, CD-ROM, facsimile, e-mail, or other media so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History–New 12-23-02.*

**61B-15.0012 Forms.**

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c), 718.621 FS. Law Implemented 718.403, 718.406, 718.502, 718.503, 718.504, 718.618(8) FS. History–New 12-23-02, Amended 8-26-04, 8-15-05, 10-16-13, Repealed 2-2-14.*

**61B-15.007 Developer, Defined.**

(1) For purposes of filing under Sections 718.202, 718.502, 718.503, 718.504 and 718.505, F.S., and Rule 61B-23.003, F.A.C., the term developer includes, subject to the exceptions provided in Section 718.103(16), F.S., or these rules:

(a) A creating developer, which means any person who creates a condominium;

(b) A successor or subsequent developer, which means any person, other than the creating developer or concurrent developer, who offers condominium parcels for sale or lease for more than 5 years in the ordinary course of business; and

(c) A concurrent developer, which means any person who acts concurrently with a developer in offering to sell or lease for more than 5 years condominium parcels in the ordinary course of business. As used in this rule, person includes natural persons, corporations, partnerships, limited liability companies, and any other legal entities.

(2) The following constitutes “offering condominium parcels in the ordinary course of business” for filing purposes, as defined by subsection 61B-15.0011(4), F.A.C., where that person:

(a) Offers more than 7 parcels, or for condominiums comprised of less than 70 parcels, where that person offers more than 5 parcels in the condominium within a period of 1 year; or,

(b) Participates in a common promotional plan that

offers more than 7 parcels within a period of 1 year. A person is not, however, deemed to have participated in a plan merely by virtue of providing financial contributions or professional or brokerage services.

(3) Notwithstanding the above, one is not offering condominium units in the ordinary course of business for filing purposes, as defined by subsection 61B-15.0011(4), F.A.C., where all of the units are offered and conveyed to a single purchaser in a single transaction. An example of such a transaction would be a financial lending institution receiving title to a number of condominium units through foreclosure or deed in lieu of foreclosure and then conveying all of such units to another person. In such circumstances, the lending institution would not be deemed to be a developer for filing purposes. However, such entity shall, upon the conveyance to a single purchaser, notify the division in writing of the identity and business address of the purchaser, the name of the condominium involved, the date of the conveyance and the number of units conveyed.

(4) For purposes of filing with the division, as defined by subsection 61B-15.0011(4), F.A.C., one is not offering condominium parcels for sale or lease for more than 5 years in the ordinary course of business where that person offers parcels in a condominium that consists of 7 or fewer residential units including all residential units planned in a phase condominium and all residential units planned within a multicondominium. However, this shall not relieve the developer of the duty to file a notice of recording information and pay annual fees as required by Sections 718.104(2), 718.403(8), and 718.501(2)(a), F.S. and subsection 61B-17.001(3), F.A.C.

(5) This rule applies to developer filing requirements and shall not exempt a developer from complying with all other provisions of the Condominium Act where the developer is offering fewer units than specified in this rule.

*Rulemaking Authority 718.501 FS. Law Implemented 718.103(11), (12), (16), (23), 718.104(2), 718.106, 718.403(8), 718.502-.505 FS. History—New 10-1-85, Formerly 7D-15.07, Amended 1-27-87, 7-10-88, 3-21-89, 6-13-89, Formerly 7D-15.007, Amended 11-14-95, 12-23-02, 3-7-06, 4-2-09.*

## **CHAPTER 61B-17 FILINGS**

61B-17.001	Developer, Filing; Electronic Filing Required
61B-17.0012	Declaration; Filing
61B-17.002	Procedure for Filing
61B-17.003	Phase Condominium Filing
61B-17.005	Examination of Documents

61B-17.006	Filing and Examination of Amendments to Documents
61B-17.009	Alternative Assurances
61B-17.011	Delivery of Documents via Alternative Media

### **61B-17.001 Developer, Filing; Electronic Filing Required.**

(1)(a) Except in the case of a reservation program, a developer of a residential condominium shall file with the division one copy of each document required by Sections 718.502(5), 718.503, and 718.504, F.S. The filing shall occur prior to any offering of a condominium unit to the public. The developer shall submit with the filing a Developer/Condominium Filing Statement, DBPR Form CO 6000-2, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03414>, and effective 10-16-13. When each subsequent phase is filed, the developer shall submit DBPR Form CO 6000-3, Filing Statement for Subsequent Phases, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03405>, and effective 12-23-02. A copy of both of these forms may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-1030.

(b) In the case of a reservation program, a developer of a condominium shall file with the division one copy of each document required by Section 718.502(2), F.S., and shall obtain approval of the division prior to any offering of a condominium unit to the public. In addition, a developer shall file, prior to offering, proof of the developer's ownership, contractual, or leasehold interest in the land upon which the condominium is to be developed. Such evidence must provide the address, or otherwise specify the location, of the land upon which the condominium is to be developed.

(2) For purposes of this rule the division shall accept a signed written statement from the developer or the developer's attorney describing the developer's interest in the land upon which the condominium is to be developed. The signature of the developer or the developer's attorney constitutes a certificate that they have read the statement and, to the best of their knowledge, information, and belief formed after reasonable inquiry, the statement accurately describes the developer's interest in the land.

(3) Upon recording the declaration of condominium pursuant to Section 718.104(2), F.S., or amendments adding phases pursuant to Section 718.403, F.S., the

developer shall file the recording information with the division within 120 working days on DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03404>, and effective 8-15-05. A copy of this form may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-1030. If the recorded documents have not already been filed, reviewed, and approved by the division in accordance with subsection (1) of this rule and Sections 718.502(5), 718.503, and 718.504, F.S., prior to recording, then a complete copy of the recorded documents must be submitted with DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION. If the recorded documents have been previously filed, reviewed, and approved by the division, then only the form need be filed.

(4) Frequently Asked Questions and Answers Sheet. Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-4, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET, incorporated herein by referenced, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03406>, and effective 12-23-02. A copy of both of this form may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-1030. The answers to the questions may be summary in nature, in which case the answers shall refer to identified portions of the condominium documents.

(5) Estimated Operating Budgets. Each condominium filing shall include an estimated operating budget conforming to the requirements of Rule 61B-22.003, F.A.C., in a single exhibit labeled "Estimated Operating Budget."

(6) Once a developer has filed documents with the division for review pursuant to Rule 61B-17.005, F.A.C., the developer may offer units to the public. However, the developer shall not close on contracts until the documents are approved by the Division pursuant to Rule 61B-17.005, F.A.C.

(7) Beginning on July 1, 2007, all new developer filings required or permitted by Chapter 61B-17, F.A.C., except as otherwise provided in this rule, shall be made by electronic filing with the Division. This requirement applies to original filings, amendment filings, reservation

filings, notices of intended conversion, and any other filing. No filing, except as provided in this rule, shall be submitted to the Division in a paper format, except that filings submitted prior to July 1, 2007, in a paper format shall be allowed to be completed in a paper format.

(a) Format. All electronic filings shall be contained in a CD ROM format. No filings shall be submitted by email or Internet, dial up modem, floppy disc, or email attachment directed to the Division. Within the CD ROM, the documents shall be presented in a portable document format (PDF) with each document labeled by name.

(b) Signatures. All documents required to contain an original signature, such as the fully executed escrow agreement, shall be reproduced electronically and shall be included on the CD ROM.

(c) Seals. All documents required to contain a seal such as an engineer's seal, architect's seal or notary public's seal, shall be reproduced electronically in such a way as to make the seal evident, and shall be included on the CD ROM.

(d) Developer responses to notices of deficiency issued by the Division shall be submitted electronically in PDF format either on a CD ROM, or as a PDF or WORD attachment to an email.

(e) Integrated text. Within 45 days following receipt of the Division's letter of approval of an electronic filing, the developer shall submit to the Division a plain text integrated version of the filed documents in CD ROM format incorporating the initial filing with all changes necessitated by the Division's examination process. For example, the declaration shall be shown as a single document containing all required amendments within its text without underlining or strike-through format. The integrated filing CD ROM shall include a signed written statement by the developer's attorney, or by the developer if not represented by an attorney, stating that the CD ROM contains an accurate integrated text of the filing. If there was no change in the filed documents necessitated by the Division's examination process, this subsection will not apply.

(f) Temporary Exemption. A developer may apply for a temporary hardship exemption if the developer experiences unanticipated technical difficulties that prevent the timely preparation and submission of any electronic filing. Such application shall be made in paper format and filed with the Division. A developer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper documents within 14 days of the filing of the paper format document.

(g) Continuing Hardship Exemption. Until July 1, 2008, if a developer determines that the preparation of an electronic filing is unduly burdensome, unduly expensive, or is not technologically available, the developer may apply to the Division for an automatic exemption from the requirement of an electronic filing in order to be permitted to file the documents in a paper format. Such automatic exemption shall only apply to the individual filing for which it is requested.

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.104, 718.403, 718.502, 718.504(21) FS. History—New 11-15-77, Amended 7-22-80, 7-6-81, 8-31-83, 10-1-85, Formerly 7D-17.01, Amended 1-27-87, 7-10-88, Formerly 7D-17.001, Amended 2-22-94, 2-20-97, 4-14-99, 1-26-03, 8-15-05, 1-17-07, 12-10-13.*

#### **61B-17.0012 Declaration; Filing.**

Any document required to be delivered to a prospective buyer or lessee pursuant to Section 718.503 or 718.504, F.S., which describes the developer's (or other person's) right to retain control of the association shall recite the provisions of Sections 718.301(1)(a)-(g), F.S., regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the declaration for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in these statutory entitlements.

*Rulemaking Authority 718.501 FS. Law Implemented 718.301, 718.503, 718.504 FS. History—New 11-23-93, Amended 12-10-13.*

#### **61B-17.002 Procedure for Filing.**

(1) Each filing shall contain in the forepart a Table of Contents which lists the documents in the filing, in the order in which they appear.

(2) Each document shall be tabbed and labeled on the right side. Each label shall identify the document by appropriate word, phrase or abbreviation.

(3) Each filing shall be submitted in an expandable file folder approximately 14-3/4" by 9-1/2" in size. Filing statements and the Filing Checklist described in this rule shall be submitted with the documents and need not be submitted to purchasers.

(4) There shall be submitted with each filing a Filing Checklist which substantially conforms to DBPR Form CO 6000-7, Filing Checklist, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03409>, and effective 12-23-02. A copy of this form may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes,

Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-1030.

(5) A developer who contracts to sell a condominium parcel when the construction, furnishing and landscaping of the condominium property submitted to condominium ownership have not been substantially completed or renovation of property converted to condominium ownership has not been substantially completed in accordance with the plans, specifications or representations made by the developer, shall file with the division a copy of a fully executed escrow agreement for contract deposits pursuant to Section 718.202, F.S. An escrow agreement is deemed to be fully executed by the inclusion of the dates of execution and the appropriate signatures. An escrow agreement is the agreement between the developer and the escrow agent establishing the escrow account.

(6) If the developer wishes to include in the filing certain documents that were previously reviewed and accepted by the division, the filing shall be accompanied by DBPR Form CO 6000-5, Certificate of Identical Documents, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03407>, and effective 12-23-02. A copy of this form may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-1030.

(7) Wherever possible, the division shall utilize electronic means of communication in its correspondence with the developer including e-mail and facsimile. If requested, the Division shall utilize the means of communication preferred by the developer.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.202, 718.502, 718.503, 718.504, 718.505 FS. History—New 11-15-77, Amended 7-22-80, Formerly 7D-17.02, Amended 4-1-92, Formerly 7D-17.002, Amended 1-26-03. 8-30-04, 12-10-13.*

#### **61B-17.003 Phase Condominium Filing.**

(1) Every developer of a phase residential condominium shall file the initial phase with the division. Said initial filing shall be submitted as required by Rule 61B-17.002, F.A.C.

(2) "Subsequent Phase" means any phase not submitted to the condominium form of ownership with the recording of the original declaration of condominium. Subsequent phase(s) shall be filed as set forth below prior to offering any unit therein for sale or lease when the lease period is more than five years. Amendments to the declaration providing for subsequent phases and supporting

documentation may be filed at the same time as the initial filing, or at a later time, but at any time all requirements of this rule shall be observed.

(3) In addition to filing as mentioned above, upon recording an amendment to the declaration submitting a subsequent phase to the condominium form of ownership, the developer shall file the recording information in accordance with subsection 61B-17.001(4), F.A.C. Upon substantial completion of the construction of each subsequent phase, the developer shall file with the division a survey prepared by a surveyor authorized to practice in the State of Florida with the appropriate certificate of the surveyor. Said certificate shall state that the construction of the improvements is substantially complete and is an accurate representation of the location and dimensions of the improvements. There shall be no filing fee for the filings described in this paragraph.

(4) When subsequent phase(s) are filed, the developer shall submit all amendments and all additional information, as outlined in Chapter 718, F.S., and these rules that pertain to said phase. Documents previously filed with the initial phase and which also pertain to the subsequent phase being filed, may be incorporated into the filing of subsequent phase(s) by reference thereto in the Filing Statement for Subsequent Phase(s).

(5) Subsequent phases shall be filed using the amendment procedures provided by Rule 61B-17.006, F.A.C. The filing fee due pursuant to Section 718.502(3), F.S., for each residential unit being added in the subsequent phase, shall accompany the filing. Each filing of a subsequent phase shall be submitted with the Filing Statement for Subsequent Phase(s).

(6) Filing for each subsequent phase shall contain a Table of Contents identifying the contents of the filing and their page numbers. The developer shall prepare the Table of Contents indicating the order in which the documents appear in the subsequent filing in order to facilitate review by the division.

(7) The declaration for an initial phase shall include a description of each anticipated phase in the manner required by Section 718.403, F.S.

(a) The estimated operating budget filed with the division in a phase condominium shall include a budget for the condominium completed through the phase being filed and a budget for the condominium as it would be upon completion of all phases, using estimated expenses as of the date of filing.

(b) The description of the general size of units pursuant to Section 718.403(2)(b), F.S., shall be stated in

terms of approximate square footage per unit type.

(8) Any amendment to the declaration that adds subsequent phases shall state the resulting percentage or proportion of the ownership interest in the common elements appurtenant to each unit.

(9) After the original declaration of condominium has been recorded, any amendment changing the estimated completion dates of any phase or changing the items required to be included in the original declaration by Section 718.403(2), F.S., shall be approved by all unit owners.

(10) If the phase plan is being extended under Section 718.403(1), F.S., the phase amendment filing must include a recorded amendment with the required unit owner approval and either of the documents required under Section 718.403(1)(c), F.S., used to determine the time period of 10 years.

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.104(4)(f), 718.403(1)-(7), 718.502(3), 718.503(2) FS. History—New 11-15-77, Amended 7-22-80, 5-11-82, Formerly 7D-17.03, Amended 1-27-87, Formerly 7D-17.003, Amended 1-20-97, 1-26-03, 8-5-03, 12-10-13.*

#### **61B-17.005 Examination of Documents.**

(1) “Initial Acceptance” means the division finds the filed documents that have been recorded acceptable as corrected, if any corrections are made following a notice of deficiency.

(2) “Final Acceptance” means:

(a) The division finds the non-recorded documents acceptable as corrected, if any corrections are made following a notice of deficiency, or

(b) The developer submitted recorded amendment(s) to previously recorded documents that incorporate corrections made after a notice of deficiency.

(3) “Record” or “recorded” means a document that has been recorded in the official records of the county where the condominium is located. The copy of the recorded document(s) provided to the division must bear the county clerk’s official stamp or seal with the recording date and location in the public records by book and page. A photocopy of the recorded document is acceptable as long as the recording information is clearly legible.

(4) “Withdrawn” means the filing has been withdrawn from the review process.

(5) Upon receipt of a filing, the division will determine whether the filing is in proper form. The filing is considered to be in proper form when:

(a) Tabbing. All forms and documents, properly

completed, tabbed, labeled and assembled in accordance with these rules, are included;

(b) The Condominium Filing Statement has been completed properly; and

(c) The correct filing fee has been received by the division.

(6) If the division does not give notice within (10) days after receipt of the filing, the filing is presumed to be in proper form for purposes of the examination process. If the filing is not considered to be in proper form, the division shall notify the developer or its agent of the unacceptability of the filing and the reasons therefor.

(7)(a) The division will examine the content of the filing to determine its sufficiency under the Condominium Act and these rules. Within 45 days from receipt of the initial filing, the division shall notify the developer or its agent by mail of any deficiencies or that the filing is accepted. If the notice is not given within 45 days from receipt of the filing, the filing is presumed to be accepted. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(b) Division acceptance of a filing pursuant to these rules shall automatically expire if, within 24 months after the date of the division's acceptance letter, the developer has not, pursuant to Section 718.104, F.S., created the condominium indicated in the accepted filing, or in the case of a phase condominium, has not created the phase or phases pertaining to that filing. However, division acceptance of a filing will not expire if, within 30 days before or after the expiration of the 24-month period referenced above, the developer in writing requests to extend the filing acceptance for an additional 24-month period. Additional requests to extend the acceptance may be filed within 30 days before or after the expiration of any requested extension. There is no fee associated with the timely filing of a request to extend the division's acceptance of a developer filing. Accompanying each request for extension shall be a statement signed by the developer or its duly authorized representative affirming that as of the date the request for extension is sent to the division, all changes to the accepted filing occasioned by changes in Chapter 718, F.S. The Condominium Act, and the rules of the division, have been effectuated. The developer, when the filing acceptance expires pursuant to this rule, shall immediately and in writing notify all purchasers under contract of the expiration of acceptance of the filed documents and shall offer immediate refunds of

any deposits collected, as well as interest as appropriate, under the contracts. If a filing acceptance expires, the developer, when subject to the provisions of Section 718.202, F.S., shall, within 45 days of such expiration, provide to the division a complete accounting of any deposits collected pursuant to the accepted documents. A complete refiling of the documents pursuant to the requirements of Chapter 718, F.S., and these rules, including the payment of filing fees, shall be required prior to any additional offerings.

(c) As utilized in this rule, the phrase "complete accounting" refers to a list of the names and addresses of all purchasers under contract, the date each contract was entered into, the amount of each deposit, the date and amount of each disbursement from the escrow account, and a copy of all notifications to purchasers under contract required by this rule.

(8) The developer shall have 45 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The division shall, however, grant an extension of the 45-day period upon written request received by the division within the 45-day period, which request shall set forth the reasons for the request. If deficiencies are not corrected within the 45-day period and an extension of time is not timely requested, the division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) 45-day extensions. The division shall notify the developer of said rejection by a final order. Prior to the issuance of a final order, the division shall notify the developer of the pending action and shall provide an opportunity for the developer to respond in writing or at a hearing if requested. If a filing is rejected, the developer, when subject to the requirements of Section 718.202, F.S., shall, within 45 days of issuance of the final order of rejection, provide the division with a complete accounting of any deposits collected pursuant to the rejected documents. The developer shall also, immediately and in writing, notify all purchasers under contract of the rejection and shall offer immediate refund of deposits collected, as well as interest as appropriate, under the contracts. A complete refiling of the documents pursuant to the requirements of Chapter 718, F.S., and these rules, including the payment of filing fees, will be required prior

to any additional offerings.

(9) The division shall notify the developer or its agent within 30 days from the receipt of documents correcting noted deficiencies of the acceptability of the corrections. If the notice is not given within 30 days, the documents will be considered accepted for filing purposes.

(10) In no event shall the division's acceptance of the filing be construed as a division endorsement or approval of the offering and no document or offering material shall indicate that the division has in any manner endorsed or approved the offering.

(11) If a filing is received without the correct filing fee, the Division's review period will not commence and the filing will not be reviewed. If the correct filing fee is not submitted within one week after the developer receives the division's notification, the filing will be returned, no further offers may be made, and all purchasers under contract shall be entitled to a refund of any deposit and interest earned thereon.

(12) If a filing contains previously recorded documents that require corrections, a recorded amendment incorporating these corrections must be filed within 30 days of the division issuing an Initial Acceptance. If the recorded amendment is not submitted or if the filing has not been withdrawn within the 30-day period, the division will reject the filing under this rule, and no further offers may be made utilizing the rejected documents.

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.501, 718.502, 718.505 FS. History—New 11-15-77, Amended 7-22-80, 8-31-83, Formerly 7D-17.05, Amended 9-7-88, 3-21-89, Formerly 7D-17.005, Amended 1-26-03, 8-30-04, 12-10-13.*

#### **61B-17.006 Filing and Examination of Amendments to Documents.**

(1) "Amendment" means:

(a) Any change to documents that have previously been filed with and accepted by the division, and

(b) Any change to a document(s) recorded in the public records, whether the change is technical or substantive, regardless of the procedure by which the change is made. Developers shall file such changes as amendments, regardless of the nature of the changes, except as provided in paragraph (6)(b).

(2) "Initial Acceptance" means the division finds the filed documents that have been recorded acceptable as corrected, if any corrections are made following a notice of deficiency.

(3) "Final Acceptance" means:

(a) The division finds the non-recorded documents acceptable as corrected, if any corrections are made following a notice of deficiency, or

(b) The developer submitted recorded amendment(s) to previously recorded documents that incorporate corrections made after a notice of deficiency.

(4) "Record" or recorded" means a document that has been recorded in the official records of the county where the condominium is located. The copy of the recorded document(s) provided to the division must bear the county clerk's official stamp or seal with the recording date and location in the public records by book and page. A photocopy of the recorded document is acceptable as long as the recording information is clearly legible.

(5) "Withdrawn" means the filing has been withdrawn from the review process.

(6)(a) Every developer of a condominium who holds a unit for sale in a condominium shall submit to the division any amendments in documents or items on file with the division and deliver to the purchaser pursuant to Rule 61B-18.001, F.A.C., all amendments prior to closing, but in no event, later than 10 days after the amendment is accepted by the division.

(b) No changes shall be made to the form purchase contract approved by the division without first filing and obtaining acceptance of such changes from the division. However, in an individual unit sale transaction using the form purchase contract approved by the division, a change to the purchase contract or a modification made on the purchase contract or the attachment of a rider or addendum to such contract is not required to be filed with the division provided that such change, modification, rider or addendum does not contain either a waiver or reduction of purchaser's rights under Chapter 718, F.S., or a reduction of a developer's duties under Chapter 718, F.S., and the rules promulgated thereunder, and is not otherwise inconsistent with Chapter 718, F.S. A developer is not required to deliver such change, modification, rider or addendum to any purchaser other than the purchaser whose contract has been modified by such change, modification, rider or addendum.

(c) Upon filing an amendment or amendments to documents or items that have been accepted by the division, the developer shall pay to the division a filing fee of \$100 per filing. A developer may include within each filing, multiple amendments relating to a single condominium in which case a filing fee of only \$100 shall be charged. However, there shall be no charge for filing documents that do not change an accepted condominium

filing, such as a Certificate of Incorporation, or a change to a notice of intended conversion, reservation program, or notice of termination of condominium.

(d) The following amendments do not materially alter or modify the offering within the meaning of Section 718.503, F.S. However, nothing herein shall preclude a developer from arguing that other amendments not expressly described herein do not materially alter or modify the offering within the meaning of Section 718.503, F.S.

1. Any grammatical or typographical correction, or change in presentation or format that does not affect the meaning of any provision of the accepted offering documents and does not violate conspicuous type or other disclosure requirements contained in Chapter 718, F.S.;

2. Any substitution of an executed, filed or recorded copy of a document for the otherwise identical unexecuted, unfiled or unrecorded copy of the document contained in the accepted offering documents (with regard to the inclusion of a recorded phase amendment pursuant to Sections 718.110 and 718.403, F.S., substitution shall be permitted if the form of phase amendment accepted with the initial registration is utilized for the phase amendment and the only modifications are ministerial in nature and designed to complete the amendment instrument as originally contemplated);

3. Inclusion of updated information such as identification or description of:

- a. The current officers and directors of the association;
- b. The name or ownership of the developer so long as the business organization of the developer still exists;
- c. Phases added to the condominium in accordance with the phasing plan, pursuant to Section 718.403, F.S., and accepted by the division;
- d. Any action taken pursuant to any previously disclosed reserved right not arising under Section 718.110(4) or 718.403(2), F.S.;
- e. Disclosure of improvements for which construction has been completed and which improvements were either previously proposed or not complete;
- f. Modification of the applicable budgets to incorporate submission of additional phases committed to the condominium; or
- g. Elimination of disclosures required by Section 718.504(12), F.S., following transfer of control of the association pursuant to Section 718.301, F.S.

4. Any inclusion of information that will have application only to purchasers not currently under contract;

5. Modifications related to an increase in closing costs

for prospective purchasers;

6. Modifications related to a change in the escrow agent or changes in the provision of title insurance; or

7. Modification of a master escrow agreement to include additional condominium projects or to remove condominium projects for which the developer is no longer offering units for sale.

(7) The developer shall submit with the amendments the following information on a separate cover sheet:

- (a) Name and physical location of the condominium to which amendments apply;
- (b) Developer's name and mailing address;
- (c) Division Identification Number;
- (d) Identification of document to which amendment applies;
- (e) Book, page number and county where recorded, if applicable;
- (f) A statement summarizing each amendment; and
- (g) Identification of all new and deleted language. This requirement may be accomplished by providing a coded copy of the new documents identifying new language with underlining and striking through material to be deleted from the documents.

(8) The division may require that documents or items be revised to include amendments if said revision is deemed necessary by the division for full and adequate disclosure.

(9) Upon receipt of an amendment, the division will examine the material to determine its sufficiency under the Condominium Act and these rules. Within 35 days from receipt of the documents, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the amendment is proper for filing purposes. If the notice is not given within 35 days from receipt of the documents, the amendment is presumed to be properly filed. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(10) The developer shall have 20 days from the date of the division's notification of deficiencies in the amended material to correct the deficiencies noted by the division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The division shall, however, grant an extension of the 20-day period upon written request of the developer. If

deficiencies are not corrected within the 20-day period and an extension of time has not been granted by the division, the division shall reject the amendment and no further offers shall be made utilizing the rejected documents.

(11) Within 20 days after the receipt of documents responding to deficiencies noted by the division, the division shall notify the developer or its agent as to the acceptability of the corrected documents. If the notice is not given within 20 days, the amended documents will be considered accepted.

(12)(a) After the filing is accepted, a developer shall not alter the condominium type through these amendment procedures. For purposes of this rule, the condominium types utilized by the division are as follows:

1. Standard Condominium refers to a single condominium operating under a single condominium association the development of which is completed in one stage of construction, as opposed to a phase condominium;

2. Land Condominium refers to a condominium in which the residential units of the real property being submitted to the condominium form of ownership consist of land only;

3. Planned Unit Development refers to a condominium which is included in or located within a real property development project that contains or will contain other types of real property ownership such as townhouses or single family homes;

4. Conversion Condominium refers to a condominium development in which currently existing real property improvements are being converted to residential condominium ownership;

5. Phase Condominium means a condominium developed pursuant to Section 718.403, F.S.; and

6. Multicondominium means a condominium that is part of or included within a development which contains more than one condominium operated by a single association.

(b) In order to change the condominium type of an accepted condominium filing, for example changing from a standard condominium plan to a phase plan, conversion, or planned unit development, or any combination thereof, the developer must file anew with the division pursuant to Section 718.502, F.S., and Rule 61B-17.005, F.A.C.

(13) In no event shall the division's acceptance of an amendment be construed as endorsement or approval of the amendment by the division. No documents or offering materials shall indicate the division has in any manner endorsed or approved the materials.

(14) If an amendment filing contains recorded

documents that require corrections, a recorded amendment incorporating these corrections must be filed within 30 days of the division issuing an Initial Acceptance. If the recorded amendment is not submitted or if the filing has not been withdrawn within the 30-day period, the division will reject the filing under this rule, and no further offers may be made utilizing the rejected documents.

*Rulemaking Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.103(14), 718.502, 718.502(3), 718.503, 718.504, 718.505 FS. History—New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-17.06, Amended 1-27-87, 4-1-92, 7-11-93, Formerly 7D-17.006, Amended 11-23-93, 1-26-03, 8-30-04, 12-10-13.*

### **61B-17.009 Alternative Assurances.**

(1) This rule governs alternative assurances provided for in Section 718.202, F.S. An alternative assurance must be approved by the Division Director prior to the use by a Developer of the sales deposits intended to be assured. Pending approval, sales deposit funds to be assured by the alternative assurance must be placed in escrow.

(2) Procedure for Filing. A proposed alternative assurance filing should be submitted under cover separate from any condominium filing. The alternative assurance filing must include:

(a) A cover letter explaining the details of the alternative assurance. The letter must include the name and address of the condominium for which the assurance is intended;

(b) A copy of the instrument evidencing the proposed alternative assurance; and

(c) A copy of the purchase deposit escrow agreement. The escrow agreement shall contain the following minimum provisions:

1. The developer and escrow agent must have the Division Director's written approval of the use of an assurance prior to its use by the developer.

2. The amount of any assurance plus the amount of any sales deposits in escrow must at all times equal or exceed the amount of sales deposits required to be assured by Section 718.202, F.S. It is the developer's duty to ensure that the assurances are adequate.

3. The developer shall provide the escrow agent with a monthly report of the amount of funds currently assured. The developer shall provide the division with a quarterly report of the amount of funds currently assured.

4. The developer shall ensure that the Division Director, escrow agent and the developer receive at least a 30-day notice prior to the cancellation of any assurance.

5. At least 15 days prior to the expiration of any assurance posted in lieu of the escrow requirements of Section 718.202, F.S., the developer must place funds assured by the instrument into escrow.

(3) Types of assurances. As provided by Section 718.202(1), F.S., the Division Director is authorized to accept the following types of assurances:

(a) A surety bond issued by a company authorized and licensed to issue surety bonds in Florida;

(b) An irrevocable letter of credit issued by a financial institution as defined by Section 655.005, F.S., and located in Florida; or

(c) A cash bond held by the escrow agent.

(4) Minimum terms and conditions. The assurance instrument shall include the following minimum terms and conditions:

(a) The escrow agent has authority to draw on the assurance and treat the drawn funds as if they were escrowed funds;

(b) The Division Director has authority to draw on the assurance when circumstances warrant a draw and the escrow agent fails to do so;

(c) The original expiration date of any letter of credit or surety bond shall be not less than one year from the date of issuance; and

(d) If the assurance is automatically renewable the issuer shall give the escrow agent and the Division Director not less than 30 days notice of cancellation.

(5) Purchaser Refunds: During the period in which any letter of credit is in effect, if any purchaser is entitled to a refund as provided in Section 718.202(1), F.S., the refund must be made to the purchaser within thirty (30) days after the purchaser's request.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.202(1), 718.501(1)(d)2. FS. History—New 4-12-82, Formerly 7D-17.09, 7D-17.009, Amended 1-26-03.*

### **61B-17.011 Delivery of Documents via Alternative Media.**

(1) If the developer wishes to use alternative media (for example, CD-ROM) for delivery of documents to purchasers, the developer must give the purchaser the option of receiving paper documents or alternative media documents. The purchaser's choice of delivery method shall be set forth in writing on a form called the "alternative media disclosure statement." The form "alternative media disclosure statement" shall be filed with the division for review and approval along with other required documents. The form shall:

(a) Be separate from other documents delivered;

(b) Disclose the system requirements (for example, operating system, memory, hard drive, processor speed, printer requirements, software) necessary to view the alternative media documents;

(c) State that the purchaser should not select alternative media unless the purchaser will have the means to read the documents before the expiration of the 15-day cancellation period. The alternative media disclosure statement shall be listed on the form receipt for documents in the manner prescribed in DBPR Form CO 6000-6, Receipt for Condominium Documents, incorporated herein by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03408>, and effective 8-26-04, and as required in subsection 61B-18.004(3), F.A.C. A copy of this form can be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 N. Monroe Steet, Tallahassee, Florida 32399.1030. If a portion, but not all, of the documents are delivered through the use of alternative media, the developer shall identify in the prospectus table of contents and in the receipt for condominium documents which documents are being delivered via alternative media and which documents are being delivered in paper form.

(2) Prior to delivery of documents to a purchaser via alternative media, the developer must submit to the division a sample copy of the alternative media proposed for use by the developer together with an executed certificate, using the form prescribed in DBPR Form CO 6000-5, Certificate of Identical Documents, referenced in Rule 61B-17.002, F.A.C., certifying that the portion of the documents delivered via alternative media is identical in form and substance to the corresponding portion of the documents reviewed and accepted by the division.

(3) In the event that the developer amends the documents and wishes to deliver the amendment to

purchasers via alternative media, the provisions of this rule shall apply.

*Rulemaking Authority 718.501(1)(f), 718.501(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History—New 1-26-03, Amended 12-10-13*

## CHAPTER 61B-18 DOCUMENTS

61B-18.001	Contracts
61B-18.002	Plot Plans and Floor Plans
61B-18.004	Receipt for Condominium Documents
61B-18.0051	Declarations
61B-18.007	Developer Exemptions Under Condominium Documents
61B-18.008	Disclosure of Developer's Rental Program

### 61B-18.001 Contracts.

(1) For the purpose of this rule, the following definitions shall apply:

(a) Closing on a contract for the sale shall mean conveyance of the unit as evidenced by the delivery of the deed transferring title to the purchaser.

(b) Closing on a contract for the lease of a unit shall mean execution of the lease by all parties.

(2) Prior to closing, a contract for the sale of a unit or a contract for the lease of a unit for an unexpired term of more than five years is voidable by the purchaser or lessee within fifteen days after both of the following have occurred:

(a) The contract has been executed by the buyer, and

(b) The buyer has signed the receipt for documents required by Rule 61B-18.004, Florida Administrative Code.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-17.006, Florida Administrative Code, the developer shall provide to those who have not closed a written statement that if any of the above-referenced amendments materially alter or modify the offering in a manner which is adverse to the purchaser, the purchaser or lessee shall have a 15-day voidability period.

(4) At the time of closing a sale or lease for a period of more than 5 years, the developer shall notify the purchaser or lessee in writing stating that the developer has provided the purchaser or lessee all amendments to items delivered to the purchaser or lessee pursuant to Chapter 718, Florida Statutes.

(5) After the buyer or lessee for a term of more than 5 years has received all of the items required by Chapter 718, Florida Statutes, and these rules of the Division as

evidenced by the signed Receipt of Documents, he may extend the time of closing for a period not to exceed 15 days if closing was scheduled less than 15 days after execution of contract and receipt of the documents.

(6) In order to void the contract, the buyer or lessee shall give written notice to the developer named in the contract to cancel the contract.

(7) If a contract is properly terminated by the buyer or lessee, as described in this rule, the developer shall refund to the proposed buyer or lessee any deposit made, together with any interest in accordance with Section 718.202, Florida Statutes.

(8) In the sale or lease of a unit which has been occupied by someone other than the buyer, a statement that the unit has been occupied must be included in the contract.

(9) If a contract is for the lease of a unit for a term of more than 5 years, the contract shall include as an exhibit a copy of the proposed lease.

(10) Only contracts conforming to the requirements of this rule and the provisions of Section 718.503, Florida Statutes, may be utilized by a developer in connection with the offering and sale, or lease for a term of more than five years, of a unit pursuant to the requirements of Section 718.502, Florida Statutes. A contract shall not limit the purchaser's remedy, for the developer's willful non-performance under the contract, to a return of the purchaser's deposit or a return of the purchaser's deposit plus interest.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.202, 718.501, 718.502, 718.503, 718.504, 718.505 FS. History—New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-18.01, Amended 1-27-87, Formerly 7D-18.001, Amended 4-14-99.*

### 61B-18.002 Plot Plans and Floor Plans.

(1) Every plot plan shall be a legible, scaled drafted map and shall indicate the following:

(a) Name of the condominium;

(b) Scale, date, and north arrow;

(c) Ingress and egress;

(d) The use and approximate size, location, and height of all existing and/or proposed buildings and other structures;

(e) Common areas and elements;

(f) Limited common elements;

(g) Easements;

(h) Parking areas;

(i) The party who prepared the map.

(2) Each item depicted on the plot plan shall be

identified as existing or proposed.

(3) Every filing shall include, if applicable, a floor plan for each type of unit. For the purposes of disclosure provided to purchasers and filed with the Division pursuant to Sections 718.502, 718.503 and 718.504, Florida Statutes, the floor plan shall be legible, and shall, at a minimum, show:

(a) The perimeter boundaries of the unit and the approximate dimensions of such boundaries.

(b) The walls separating each room within the unit and the approximate dimensions of each room.

(c) The approximate location of all doorways.

(d) The dimension requirements of this rule may be achieved with a plan drawn to scale with the scale depicted on the plan.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.103, 718.104, 718.502, 718.503, 718.504 FS. History—New 11-15-77, Formerly 7D-18.02, Amended 7-10-88, Formerly 7D-18.002, Amended 1-19-97.*

#### **61B-18.004 Receipt for Condominium Documents.**

(1) Every developer who enters into a contract for the sale of a residential condominium unit or for the lease of a residential condominium unit for a lease period of more than five years shall obtain from the purchaser or lessee a receipt acknowledging that he has been provided the required documents by the developer.

(2) The developer shall itemize all items which are applicable and are to be delivered to the purchaser. Those items to be delivered shall be those documents required by the Division for filing during the examination period.

(3) Said receipt shall be in substantially the form prescribed by DBPR Form CO 6000-6, Receipt for Condominium Documents, as referenced in Rule 61B-15.0012, Florida Administrative Code, and shall include but not be limited to the items listed. A copy of the receipt form shall be submitted to the Division at the time of filing. The developer shall provide the purchaser or lessee with a copy of the signed receipt, upon request.

(4) The developer should retain a copy of the signed receipt for a period of five years after the date of closing of the transaction. Said receipt should be maintained in the official business records of the developer.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History—New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-18.04, 7D-18.004, Amended 12-23-02.*

#### **61B-18.0051 Declarations.**

A declaration of condominium in which percentage of ownership is not based upon an equal fractional basis shall include the square footage within each unit or unit type based on the perimetrical boundaries ascribed to each unit or unit type or the dimensions of each unit as elsewhere provided in the declaration of condominium or the survey or graphical description, as well as the total square footage of all units combined.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.104(4)(f), (g) FS. History—New 2-7-06.*

#### **61B-18.007 Developer Exemptions Under Condominium Documents.**

Unless otherwise expressly authorized by Chapter 718, Florida Statutes, no provision in any declaration, articles of incorporation or bylaws recorded in the public records subsequent to the effective date of this rule shall partially or totally exempt the developer, transferees or designees of the developer, or units owned by the developer or its designees from the requirements of any such document which apply to all other owners or units and which pertain to any of the following:

(1) Requirements that leases or lessees be approved by the association;

(2) Restrictions on the presence of pets;

(3) Restrictions on occupancy of units based on age;

(4) Restrictions on the type of vehicles allowed to park on condominium property or association property; however, the developer and its designees shall have the right to be exempt from any such parking restriction if the vehicle is engaged in any activity relating to construction, maintenance, or marketing of units, if such exemption is provided in the condominium documents.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.302(4) FS. History—New 1-27-87, Formerly 7D-18.007.*

#### **61B-18.008 Disclosure of Developer's Rental Program.**

(1) In determining whether a developer's plan includes a program of leasing, and thus requires disclosure pursuant to Section 718.504(10), Florida Statutes, it shall be relevant, although not dispositive, whether and the extent to which:

(a) The developer has advertised the availability of its units for rent;

(b) The developer has listed any of its units for rent with a broker or salesman;

(c) The developer has designated on internal marketing charts, memoranda or lists certain units as for sale and other units as for rent; and

(d) The developer-owned units are available for rent but not for purchase.

(2) A developer shall be presumed not to have a program of leasing requiring disclosure pursuant to the above statute if the developer offers no more than 7 leases within a period of 1 year in a condominium comprised of 70 or more units. In condominiums containing fewer than 70 units, the foregoing presumption shall exist if, in any 1 year period, the developer offers 5 or fewer such leases.

(3) In describing a program of leasing in a prospectus for a residential condominium, the developer shall identify:

- (a) The total number of units to be leased;
- (b) The specific units to be leased;
- (c) The provisions and duration of the proposed leases;

and

(d) The estimated length of time in which the developer plans to lease units rather than sell them or lease units and sell them subject to such leases.

(4) Where a developer has no current intention of engaging in a program of leasing at the time the prospectus is filed with the Division and therefore does not make the disclosures required by Section 718.504(10), Florida Statutes, the developer may not subsequently engage in a program of leasing until the developer:

(a) Files an amendment with the Division, pursuant to Rule 61B-17.006, Florida Administrative Code, fully disclosing the information noted above; and

(b) Provides a copy of the amendment to the association and to every unit owner.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.504(10), 718.502(1),(2)(a), 718.503(1)(a) FS. History—New 1-27-87, Formerly 7D-18.008.*

## **CHAPTER 61B-19 EDUCATION AND TRAINING PROGRAMS**

61B-19.001 Provider Filing and Curriculum for Educational and Training Programs

61B-19.0015 Required Information (Repealed)

### **61B-19.001 Provider Filing Curriculum for Educational and Training Programs.**

(1) Anyone seeking to be a division approved condominium education provider shall file with the division the educational materials used in the condominium education program. The following information shall be included regarding the education program:

(a) A price list for the program and a copy of all materials, including any information that will be provided to participants.

(b) The physical locations where programs will be available, if not web-based.

(c) Dates when programs will be offered.

(2) All materials must be submitted to the division via e-mail to CTMH.BdMbrCertProviders@myfloridalicense.com, by providing access to web-based training programs, or in either printed form or CD ROM format to the following address:

Division of Florida Condominiums, Timeshares, and Mobile Homes  
Bureau of Compliance  
1940 North Monroe Street  
Tallahassee, FL 32399-1030

(3) Programs shall cover at least four of the following topics in order to meet the requirements of an educational curriculum for a condominium education program as provided in Section 718.112(2)(d)4.b., F.S.:

- (a) Budgets and reserves.
- (b) Elections.
- (c) Financial reporting.
- (d) Condominium operations.
- (e) Records maintenance, including unit owner access to records.

(f) Dispute resolution.

(g) Bids and contracts.

(4) Programs and materials shall not contain editorial comments.

(5) Within 45 days from receipt of the materials, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 45 days from receipt of the materials, materials are deemed approved.

(6) The provider shall have 45 days from the date of the division's notification of deficiencies to correct such deficiencies. If the deficiencies are not corrected within the 45-day period, the division shall reject the filing.

(7) Within 20 days from receipt of the corrections to noted deficiencies, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 20 days from receipt of the corrections, the materials are deemed approved.

(8) Approved materials may be provided to participants via web-based training programs, seminars, or printed media.

(9) The division will maintain a list of approved programs and providers on the Department of Business and Professional Regulation's website at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>.

(10) The division reserves the right to require changes to approved education and training programs.

(11) The provider will issue a certificate of completion to a board member who has successfully completed the approved educational curriculum.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.112(2)(d)4.b., 718.501(1)(j) FS. History--New 12-10-09, Amended 2-15-15.*

### **61B-19.0015 Required Information.**

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.501(1)(j) FS. History--New 12-10-09, Repealed 1-19-15.*

## **CHAPTER 61B-20 DEVELOPER OBLIGATIONS AND RESOLUTION GUIDELINES FOR CONDOMINIUM DEVELOPERS**

61B-20.003	Escrow Agents and Escrow Agreements
61B-20.004	Definitions and Purpose
61B-20.005	Educational Resolution
61B-20.006	Enforcement Resolution and Civil Penalties

### **61B-20.003 Escrow Agents and Escrow Agreements.**

(1) In determining whether an escrow agent, identified in an escrow agreement filed with the division, is independent of a condominium developer, the division, when it has reason to question the independence of the escrow agent, shall consider and require reasonable disclosure of factors, including any familial relationship or common financial interest between the developer and the escrow agent, which reasonably relate to the developer's ability to directly or indirectly control or influence the escrow agent in the performance of his statutory duties. Additionally, when the division has reason to question the independence of the escrow agent, the division shall require a statement from the escrow agent attesting to the agent's independence and affirming that there is no conflict between the agent's duties as escrow agent and in any other capacity in which the agent serves. One who is otherwise qualified to serve as escrow agent, however, will not be precluded from serving in such a capacity solely because:

(a) The escrow agent performs routine banking or

financial services for the developer; or

(b) A non-employee attorney-client relationship exists between the developer and the escrow agent, including representation of the developer in legal matters relating to the condominium for which he serves as escrow agent, unless and until the obligations as attorney and as escrow agent result in a conflict of interest or require a violation of the respective legal duties attendant to such positions; or,

(c) The escrow agent provides brokerage services on behalf of the developer, except that such an escrow agent is not independent of the developer with respect to any deposits or payments received by the escrow agent pursuant to any sales, rental or lease agreements for which the escrow agent has also served as the developer's sales, rental, or leasing agent.

(2) At any time that the Division concludes that an escrow agent is not independent of a developer, it shall cite this as a deficiency in the developer's condominium reservation filing or residential condominium prospectus and shall order the developer to immediately obtain an independent escrow agent and have all escrow funds turned over to the new agent.

(3) If the developer is required to have an escrow agreement by the provisions of Section 718.202, F.S., in connection with a filing made pursuant to paragraph 61B-17.001(1)(a), F.A.C., the escrow agreement shall be separate from any escrow agreement used by the developer as part of a reservation filing pursuant to paragraph 61B-17.001(1)(b), F.A.C.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.202(8), 718.502 FS. History--New 10-1-85, Formerly 7D-20.03, Amended 1-27-87, 3-21-89, Formerly 7D-20.003.*

### **61B-20.004 Definitions and Purpose.**

(1) Definitions. For the purposes of Rules 61B-20.004, 61B-20.005 and 62B-20.006, F.A.C., the following definitions shall apply:

(a) "Accepted Complaint" means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 718.501(1), F.S.

(b) "Affirmative or corrective action" means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) "Bad check" means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(d) "Developer," for purposes of these guidelines, shall

have the same meaning as stated in Section 718.103(16), F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division's administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) The division shall apply these guidelines against the developer pursuant to the division's authority in Section 718.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines, regardless of whether turnover has occurred. The developer shall not pass the cost of affirmative or corrective action or penalties on to the unit owners.

(4) These penalty guidelines are promulgated pursuant to the division's authority in Section 718.501(1)(d), (f), and (k), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 718.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., are necessary to explicate the division's education and enforcement policy. These rules are not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d)4., F.S. These rules are not intended

to cover, or be applied to violations of Chapter 718, F.S., or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-21, F.A.C.

*Rulemaking Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.501(1)(d)4. FS. History—New 6-4-98.*

#### **61B-20.005 Educational Resolution.**

An initial accepted complaint, directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 15 business days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution.

*Rulemaking Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4.,(k) FS. History—New 6-4-98.*

#### **61B-20.006 Enforcement Resolution and Civil Penalties.**

(1) The division will seek compliance through an enforcement resolution for repeated minor violations, for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. These guidelines list aggravating and mitigating factors that will reduce or increase the penalty amounts within the specified range and those circumstances that justify a departure from range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule section are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints

by stipulation, settlement agreement, or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule section contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by a developer. The absence of any violation from this rule section shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule section, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule section; and
2. The mitigating or aggravating factors listed in this rule section.

(b) Violations Included. This rule section applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order a developer to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-20.006, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-20.006, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule section.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule section. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.
2. Financial loss to parties or persons affected by the

violation.

3. Financial gain to parties or persons who perpetrated the violation.

4. The same violation was committed after a Notice of Deficiency was issued.

5. The disciplinary history of the developer, including such action resulting in settlement or pending resolution.

6. The violation caused substantial harm, or has the potential to cause substantial harm to condominium residents or other persons.

7. Undue delay in initiating or completing, or failure to take affirmative or corrective action after the developer received the division's written notifications of the violation.

8. The violation had occurred for a long period of time.

9. The violation was repeated within a short period of time.

10. The developer impeded the division's investigation or authority.

11. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Reliance on written professional or expert counsel and advice.

2. Acts of God or nature.

3. The violation caused no harm to condominium residents or other persons.

4. The developer took affirmative or corrective action before it received the division's written notification of the violation.

5. The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.

6. The developer cooperated with the division during the investigation.

7. The investigation was concluded through consent proceedings.

(4) The provisions of this rule section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 718, F.S.

(6) In addition to the penalties established in this rule section, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law.

(a) Cost of Onsite Reviews and Investigations.

Expenses charged pursuant to this subsection are computed in the manner prescribed by Section 112.061, F.S. The division will seek to collect from a developer, association, officer, director, bulk buyer, or bulk assignee the actual cost of an onsite review or investigation under Section 781.501(1)(d)8., F.S. as verified by the agency travel reimbursement approved under Section 112.061, F.S.

(b) Additionally, the division reserves the right to seek to recover any costs, penalties, attorney’s fees, court costs, service fees, collection costs, and damages imposed by law if a developer submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer

harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	Section 718.110(1)(b), F.S.	Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.
Board	Section 718.112(2)(h)2., F.S.	Failure to maintain corporate status
Board	Section 718.111(1)(a), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	Section 718.111(1)(b), F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	Section 718.112(2)(a)2., F.S.	Improper quorum at unit owner meeting.
Board	Section 718.112(2)(b)1., F.S.	Failure of proxy to contain required elements.
Board	Section 718.112(2)(b)2., F.S.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Board	Section 718.112(2)(c), F.S.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Board	subsection 61B-23.002(9), F.A.C.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	Section 718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	Section 718.112(2)(d)4., F.S.	Failure to hold a unit owner meeting to obtain unit owners’ approval when written agreements are not authorized.
Board	Section 718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
Board	Section 718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
Board	Section 718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
Board	Section 718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association’s budget.
Board	Section 718.303(3), F.S.	Failure to have the authority in the documents when levying fines.
Board	subsection 61B-23.001(2), F.A.C.	Failure to provide proper notice of fines.
Board	subsection 61B-23.001(2), F.A.C.	Failure to allow unit owners to attend board or committee meetings.
Board	Section 718.112(2)(b)5., F.S.	Failure to provide a speaker phone for board or committee meetings

Board	subsection 61B-23.001(4), F.A.C.	held by teleconference.
Board	subsection 61B-23.002(10), F.A.C.	Failure to employ a licensed manager when licensure is required.
Board	subparagraph 61B-23.0021(1)(d)2., F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
Budgets	Section 718.112(2)(e), F.S.	Failure to fill vacancy properly.
		Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	Section 718.112(2)(f)1., F.S.	Failure to include applicable line items in proposed budget.
Budgets	Section 718.504(21), F.S.	Failure to show limited common element expenses in proposed budget.
Budgets	Section 718.112(2)(f)1., F.S.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	subsection 61B-22.003(5), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
Budgets	paragraph 61B-22.003(1)(b), F.A.C.	Failure to propose full reserve funding in proposed budget.
Budgets	paragraph 61B-22.003(1)(c), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
Budgets	paragraph 61B-22.003(1)(d), F.A.C.	Failure to provide the required separate proposed budget for each condominium operated by the association.
Budgets	paragraphs 61B-22.003(1)(e), (f), (g), F.A.C.	Improper nomination procedures in election.
Budgets	subsection 61B-22.005(1), F.A.C.	
Budgets	paragraph 61B-22.003(4)(a), F.A.C.	
Elections	Section 718.112(2)(d)3., F.S.	
Elections	subsection 61B-23.0021(3), F.A.C.	Including a candidate who did not provide timely notice of candidacy.
Elections	Section 718.112(2)(d)3., F.S.	
Elections	subsection 61B-23.0021(5), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	subsection 61B-23.0021(6), F.A.C.	
Elections	subsections 61B-23.0021(8), (10), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	paragraph 61B-23.0021(10)(c), F.A.C.	Failure to timely hold runoff election.
Records	Section 718.111(1)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	Section 718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded declaration and amendments.
Records	Section 718.111(12)(a)3., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
Records	Section 718.111(12)(a)4., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
Records	Section 718.111(12)(a)7., F.S.	Failure to maintain a current unit owner roster. Failure of roster to include all elements.
Records	Section 718.111(12)(a)14., F.S.	Failure to maintain or annually update the question and answer sheet.
Records	paragraph 61B-23.002(7)(a), F.A.C.	
Records	Section 718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
Records	Sections 718.111(12)(b), (c), F.S.	Failure to provide access to records.
Records	subsection 61B-22.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Records	subsection 61B-23.003(6), F.A.C.	Failure to maintain a copy of the receipt for delivery of association records upon transfer of control.
Reporting	Section 718.111(13), F.S.	Failure to timely provide the annual financial report.

Reporting	subparagraph 61B-22.006(3)(a)5., F.A.C.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	paragraphs 61B-22.006(3)(b), (c), F.A.C.	Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	paragraph 61B-22.006(3)(d), F.A.C.	Improper disclosure in the year-end financial statements of revenues and expenses related to limited common elements.
Reporting	subsection 61B-22.006(4), F.A.C.	Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year-end financial statements.
Reporting	subsection 61B-22.006(5), F.A.C.	Failure to show developer assessments separately from non-developer owners in the year-end financial statements or annual financial report.
Reporting	paragraph 61B-22.006(3)(a), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	paragraph 61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.
Reporting	paragraph 61B-22.0062(2)(b), F.A.C.	Failure to include in the turnover financial statements a statement of total cash payments made by the developer to the association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to

be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1, 2, and 3, for each violation as follows:

Category 1: \$10 – \$18 per unit.

Category 2: \$20 – \$50 per unit.

Category 3: \$100 – \$300 for each unit offered/created; deposit or contract.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty
Accounting Records	Section 718.111(12)(a)11., F.S. Rule 61B-22.002, F.A.C.	Insufficient detail in the accounting records Failure to maintain sufficient accounting records.	2
Assessing Assessing	Section 718.112(2)(g), F.S. Section 718.115(2), F.S.	Failure to assess at sufficient amounts. Failure to assess based upon proportionate share or as stated in the declaration of condominium.	1 2
Assessing	Sections 718.116(1), (9), F.S.	Failure by developer to pay assessments or to pay in timely manner.	2
Board	Section 718.110, F.S. Section 718.112, F.S.	Failure to follow method of amendment.	2
Board	Section 718.112(2)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	Section 718.112(2)(d)1., F.S.	Failure to hold annual meeting. Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	Section 718.111(11)(d), F.S.		2

Board	Section 718.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	Section 718.112(2)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	paragraphs 61B-22.003(1)(e), (f), (g), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
Commingle	Section 718.111(14), F.S.	Commingling association funds with non-association funds.	2
Commingle	Section 718.111(14), F.S. subsection 61B-22.005(2), F.A.C.	Commingling reserve funds with operating funds.	1
Common Expenses	Section 718.115(1), F.S. subsection 61B-23.003(3), F.A.C.	Using association funds for other than common expenses.	2
Converter Reserves	Section 718.618(1), F.S. Rule 61B-24.007, F.A.C.	Failure to calculate converter reserves properly.	2
Converter Reserves	Section 718.618(2)(a), F.S.	Failure to fund converter reserves in a timely manner.	2
Converter Reserves	Section 718.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	subparagraph 61B-22.003(1)(e)5., F.A.C. subparagraph 61B-22.006(3)(a)6., F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Development	Section 718.202(1), F.S. subsection 61B-17.009(1), F.A.C.	Developer using an alternative assurance, such as a Letter of Credit or Surety Bond, in lieu of an escrow account, without the prior approval of the Director.	3
Development	Section 718.202(1) or (6), F.S.	Failure to establish an escrow account or place funds therein.	3
Development	Sections 718.301(1), (2), (4), F.S.	Failure to transfer association control.	2
Development	Section 718.403(1), F.S.	Continuing to develop phases after expiration of phase deadline.	3
Development	Sections 718.403(1), (2), F.S. subsubsection 61B-17.003(9), F.A.C.	Failure to follow proper method to amend documents to alter phase development plan.	3
Development	Section 718.502(2)(a), F.S.	Accepting deposits prior to filing reservation and escrow agreements with the division.	3
Development	Section 718.502(2)(a), F.S. paragraph 61B-17.001(1)(a), F.A.C.	Offering sales contracts prior to initial filing with division and acceptance for form.	3
Development	Section 718.502(3), F.S. subsection 61B-17.006(2), F.A.C.	Failure to file amendments to documents previously filed with the division.	1
Development	Section 718.503(1)(a), F.S. subsection 61B-18.001(10), F.A.C.	Using sales contracts without required disclosures.	3
Development	Section 718.503(1)(b), F.S.	Failure to provide documents to purchasers.	3
Development	subsection 61B-17.001(6), F.A.C.	Closing on sales of units prior to filing with division and acceptance for content.	3
Development	subsection 61B-17.001(3), F.A.C.	Failure to provide recording information to the division.	1
Development	subsection 61B-17.003(3), F.A.C.	Offering sales contracts on units within a phase prior to filing phase documents with the division.	3
Elections	Section 718.112(2)(d), F.S. Sections 718.301(1), (2), F.S. subsection 61B-23.0021(2), F.A.C.	Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold.	2
Elections	Section 718.112(2)(d)3., F.S.	Failure to provide, or timely provide, first notice of	1

Elections	subsection 61B-23.0021(4), F.A.C. Section 718.112(2)(d)3., F.S. subsections 61B-23.0021(7), (8), F.A.C.	election. Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	Section 718.112(2)(d)3., F.S.	Failure to use ballots or voting machines.	2
Elections	Section 718.112(2)(d)3., F.S. subsection 61B-23.0021(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	paragraphs 61B-23.0021(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	paragraph 61B-23.0021(10)(c), F.A.C.	Failure to hold runoff election.	2
Elections	paragraph 61B-23.003(7)(f), F.A.C.	Improperly permitting a developer to vote for a majority of the board.	2
Final Order	Section 718.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
Guarantee	Section 718.116(9), F.S. subsection 61B-22.004(1), F.A.C.	Guarantee not properly established.	2
Guarantee	Section 718.116(9)(a), F.S. subsection 61B-22.004(3), F.A.C.	Improperly assessing unit owners.	2
Guarantee	Section 718.116(9)(a), F.S. subsection 61B-22.004(5), F.A.C.	Guarantee deficit not funded.	2
Guarantee	subsection 61B-22.004(2), F.A.C.	Guarantee period unclear/not specified, not properly extended.	2
Guarantee	paragraph 61B-22.004(4)(a), F.A.C.	Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding of reserves.	2
Guarantee	paragraph 61B-22.004(4)(b), F.A.C. subsection 61B-22.004(5), F.A.C.	Amount owed by the guarantor for the guarantee period not properly calculated.	2
Records	Section 718.111(12)(a)12., F.S.	Failure to maintain election materials for one year.	1
Records	Section 718.111(12)(a)6., F.S.	Failure to maintain minutes of meetings.	1
Records	Section 718.111(12)(b), F.S.	Failure to maintain records within Florida.	2
Records	Section 718.301(4), F.S.	Failure to deliver one or more association records upon transfer of association control.	2
Reporting	Section 718.111(13), F.S.	Failure to provide the annual financial report.	2
Reporting	Section 718.111(13), F.S.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	Section 718.111(13), F.S.	Failure to provide year-end financial statements.	2
Reporting	Section 718.111(13), F.S.	Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two year of operation.	2
Reporting	Section 718.301(4)(c), F.S.	Failure to provide turnover financial statements in a timely manner.	1
Reporting	Section 718.301(4)(c), F.S. subsection 61B-22.0062(1), F.A.C.	Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period.	2
Reporting	subsection 61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	subsection 61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or	2

		audited year-end financial statements prepared by a Florida licensed CPA.	
Reporting	subsection 61B-22.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	subparagraphs 61B-22.006(3)(a)1.-6., F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	paragraph 61B-22.006(3)(e), F.A.C. paragraph 61B-22.0062(2)(d), F.A.C.	Guarantee disclosures incomplete in, or missing from, turnover financial statements or year-end financial statements.	1
Reporting	paragraphs 61B-22.006(6)(a), (b), F.A.C. Section 718.111(13)(b), F.S.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.	1
Reporting	Section 718.111(13)(d), F.S.	Providing lower level of reporting for year-end financial statements than required.	2
Reporting	subsection 61B-22.0062(2), F.A.C.	Failure of turnover financial statements to present revenues and expenses for each fiscal year and interim period.	2
Reporting	paragraphs 61B-22.0062(2)(a)-(c), F.A.C.	Turnover financial statements omit disclosure of common expenses paid by the developer.	2
Reserves	Section 718.112(2)(f)2., F.S. subsection 61B-22.005(3), F.A.C.	Failure to calculate reserve funds properly.	1
Reserves	Section 718.112(2)(f)2., F.S. subsection 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
Reserves	Section 718.112(2)(f)2., F.S. subsections 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	Section 718.112(2)(f)2., F.S.	Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation.	1
Reserves	Section 718.112(2)(f)3., F.S. subsection 61B-22.005(7), F.A.C.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	Section 718.116(10), F.S.	Failure to use special assessment funds for intended purposes.	1

*Rulemaking Authority 718.501(1)(d)4., (f), 718.50153 FS. Law Implemented 718.501(1)(d)4., 718.50153 FS. History—New 6-4-98, Amended 9-3-13.*

**CHAPTER 61B-21  
CONDOMINIUM RESOLUTION GUIDELINES FOR  
UNIT OWNER CONTROLLED ASSOCIATIONS**

61B-21.001	Definitions and Purpose
61B-21.002	Educational Resolution
61B-21.003	Enforcement Resolution, Costs and Civil Penalties

**61B-21.001 Definitions and Purpose.**

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted Complaint” means a complaint received

by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 718.501(1), F.S.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Alleged repeated violation” means any accepted complaint for the same or substantially similar recurring conduct received by the division within two years from the resolution of a previous complaint regarding that conduct.

(d) "Association," for purposes of these guidelines, shall have the same meaning as stated in Section 718.103(2), F.S.

(e) "Bad check" means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division's administrative rules. The division recognizes that unit owner controlled associations are comprised of volunteer members who, in most circumstances, are lay people without specialized knowledge of the complex statutory and administrative rule structure of Chapter 718, F.S. Based upon this understanding, the division, as set forth in these rules, will first and foremost attempt to seek statutory and rule compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the association, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) These penalty guidelines are promulgated pursuant to the division's authority in Section 718.501(1)(d) and (f), F.S. This rule chapter does not preclude the division from imposing affirmative or corrective action pursuant to Section 718.501(1)(d)2., F.S. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-21.001, and 61B-21.002, and 61B-21.003, F.A.C., are necessary to explicate the division's education and enforcement policy. This rule chapter is not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d)4., F.S. This rule chapter is not intended to cover, or be applied to, violations of Chapter 718, F.S., or the administrative rules by a condominium developer as defined by Section 718.103(16), F.S. Such violations shall be strictly governed by the provisions of

Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., and Section 718.301(5), F.S.

*Rulemaking Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4. FS. History—New 6-4-98.*

#### **61B-21.002 Educational Resolution.**

(1) The educational resolution process, as detailed in this rule chapter, is only applicable to unit owner controlled associations.

(2) Alleged Initial Violation. An initial accepted complaint, directed at an association and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

The division will review the matter and will contact the association board by letter or telephone regarding the complaint. The division will provide educational materials or guidance to the association board to assist it with addressing the subject matter of the complaint and provide the association with the opportunity to respond. The division will notify the complainant of the educational resolution and the division's complaint file will be closed.

(3) Alleged Repeated Violations. A subsequent accepted complaint, directed at the same association involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint, directed at an association and involving a possible violation identified as major in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have

occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

*Rulemaking Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4.,(k) FS. History—New 6-4-98.*

### **61B-21.003 Enforcement Resolution, Costs and Civil Penalties.**

(1) The division will seek compliance through an enforcement resolution for repeated minor or major violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division. These guidelines list aggravating and mitigating factors that will reduce or increase the listed penalty amounts within the specified range and those circumstances that justify a departure from the range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

#### **(2) General Provisions.**

(a) Rule Not All-Inclusive. This rule chapter contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by an association. The absence of any violation from this rule chapter shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule chapter; and

2. The mitigating or aggravating factors listed in this rule chapter.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order an association to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-21.003, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-21.003, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule chapter.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule chapter. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

#### **(a) Aggravating Factors:**

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.

2. Financial loss to parties or persons affected by the violation.

3. Financial gain to parties or persons who perpetrated the violation.

4. The disciplinary history of the association, including such action resulting in an enforcement resolution as detailed in Rule 61B-21.003, F.A.C., or Section 718.501, F.S.

5. The violation caused substantial harm, or has the potential to cause substantial harm, to condominium residents or other persons.

6. Undue delay in initiating or completing, or failure to

take, affirmative or corrective action after the association received the division's written notification of the violation.

7. The violation had occurred for a long period of time.

8. The violation was repeated within a short period of time.

9. The association impeded the division's investigation or authority.

10. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Whether current members of the association board have sought and received educational training, other than information provided pursuant to Rule 61B-21.002, F.A.C., on the requirements of Chapter 718, F.S., within the past two years.

2. Reliance on written professional or expert counsel and advice.

3. Acts of God or nature.

4. The violation caused no harm to condominium residents or other persons.

5. The association took affirmative or corrective action before it received the division's written notification of the violation.

6. The association expeditiously took affirmative or corrective action after it received the division's written notification of the violation.

7. The association cooperated with the division during the investigation.

8. The investigation was concluded through consent proceedings.

(4) The provisions of this rule chapter shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the

division from imposing additional sanctions or remedies provided under Chapter 718, F.S.

(6) In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law.

(a) Cost of Onsite Reviews and Investigations. Expenses charged pursuant to this subsection are computed in the manner prescribed by Section 112.061, F.S. The division will seek to collect from a developer, association, officer, director, bulk buyer, or bulk assignee the actual cost of an onsite review or investigation under Section 781.501(1)(d)8., F.S. as verified by the agency travel reimbursement approved under Section 112.061, F.S.

(b) Additionally, the division reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law if an association submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$2,500 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	Section 718.110(1)(b), F.S. Section 718.112(2)(h)2., F.S.	Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.
Board	Section 718.111(1)(a), F.S.	Failure to maintain corporate status.
Board	Section 718.111(1)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	Section 718.112(2)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	Section 718.112(2)(b)1., F.S.	Improper quorum at unit owner meeting.
Board	Section 718.112(2)(b)2., F.S.	Failure of proxy to contain required elements.
Board	Section 718.112(2)(c), F.S. subsection 61B-23.002(9), F.A.C.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of

		special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Board	Section 718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	Section 718.112(2)(d)4., F.S.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	Section 718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
Board	Section 718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
Board	Section 718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
Board	Section 718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	Section 718.303(3), F.S.	Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines.
Board	subsection 61B-23.001(2), F.A.C.	Failure to allow unit owners to attend board or committee meetings.
Board	Section 718.112(2)(b)5., F.A.C.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
Board	subsection 61B-23.001(4), F.A.C.	Failure to employ a licensed manager when licensure is required.
Board	subsection 61B-23.002(10), F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
Board	paragraph 61B-23.0021(1)(d), F.A.C.	Failure to fill vacancy properly.
	Section 718.112(2)(d)8., F.S.	
Budgets	Section 718.112(2)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	Section 718.112(2)(f)1., F.S.	Failure to include applicable line items in proposed budget.
Budgets	Section 718.112(2)(f)1., F.S.	Failure to show limited common element expenses in proposed budget.
	subsection 61B-22.003(5), F.A.C.	
Budgets	paragraph 61B-22.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	paragraph 61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit in proposed budget.
Budgets	paragraph 61B-22.003(1)(d), F.A.C.	Failure to propose full reserve funding in proposed budget.
Budgets	paragraphs 61B-22.003(1)(e), (f), (g), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
	subsection 61B-22.005(1), F.A.C.	
Budgets	paragraph 61B-22.003(4)(a), F.A.C.	Failure to provide the required separate proposed budget for each condominium operated by the association.
Elections	Section 718.112(2)(d)3., F.S.	Improper nomination procedures in election.
	subsection 61B-23.0021(3), F.A.C.	
Elections	Section 718.112(2)(d)3., F.S.	Including a candidate who did not provide timely notice of candidacy.
	subsection 61B-23.0021(5), F.A.C.	
Elections	subsection 61B-23.0021(6), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	subsections 61B-23.0021(8), (10), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.

Elections	paragraph 61B-23.0021(10)(c), F.A.C.	Failure to timely hold runoff election.
Records	Section 718.111(1)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	Section 718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded declaration and amendments.
Records	Section 718.111(12)(a)3., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
Records	Section 718.111(12)(a)4., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
Records	Section 718.111(12)(a)7., F.S.	Failure to maintain a current unit owner roster. Failure to roster to include all elements.
Records	Section 718.111(12)(a)14., F.S.	Failure to maintain or annually update the question and answer sheet.
Records	paragraph 61B-23.002(7)(a), F.A.C.	
Records	Section 718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
Records	Section 718.111(12)(b), (c), F.S.	Failure to provide access to records.
Records	subsection 61B-22.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Records	subsection 61B-23.003(6), F.A.C.	Failure to maintain a copy of the receipt for delivery of association records upon transfer of control.
Reporting	Section 718.111(13), F.S.	Failure to timely provide the annual financial report.
Reporting	subparagraph 61B-22.006(3)(a)5., F.A.C.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	paragraphs 61B-22.006(3)(b), (c), F.A.C.	Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	paragraph 61B-22.006(3)(d), F.A.C.	Improper disclosure in the year-end financial statements of revenues and expenses related to limited common elements.
Reporting	subsection 61B-22.006(4), F.A.C.	Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year-end financial statements.
Reporting	paragraph 61B-22.006(3)(a), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	paragraph 61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or

more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1 and 2, for each violation as follows:

Category 1: \$6 – \$10 per unit.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested
Category 2:	\$12 – \$20 per unit.		
Accounting Records	Section 718.111(12)(a)11., F.S. Rule 61B-22.002, F.A.C.	Insufficient detail in the accounting records. Failure to maintain sufficient accounting records.	2
Assessing	Section 718.112(2)(g), F.S.	Failure to assess at sufficient amounts.	1
Assessing	Section 718.115(2), F.S.	Failure to assess based upon proportionate share or as stated in the declaration of condominium.	2
Board	Section 718.110, F.S. Section 718.112, F.S.	Failure to follow method of amendment.	2
Board	Section 718.112(2)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	Section 718.112(2)(d)1., F.S.	Failure to hold annual meeting.	2
Board	Section 718.111(11)(d), F.S.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	Section 718.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	Section 718.112(2)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	paragraphs 61B-22.003(1)(e), (f), (g), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
Commingle	Section 718.111(14), F.S.	Commingle association funds with non-association funds.	2
Commingle	Section 718.111(14), F.S. subsection 61B-22.005(2), F.A.C.	Commingle reserve funds with operating funds.	1
Common Expenses	Section 718.115(1), F.S. subsection 61B-23.003(3), F.A.C.	Using association funds for other than common expenses.	2
Converter Reserves	Section 718.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	subparagraph 61B-22.003(1)(e)5., F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Reserves	subparagraph 61B-22.006(3)(a)6., F.A.C.		
Elections	Section 718.112(2)(d), F.S. subsection 61B-23.0021(2), F.A.C.	Failure to hold election.	2
Elections	Section 718.112(2)(d)3., F.S.	Failure to use ballots or voting machines.	2
Elections	Section 718.112(2)(d)3., F.S. subsection 61B-23.0021(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	1
Elections	Section 718.112(2)(d)3., F.S. subsections 61B-23.0021(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	Section 718.112(2)(d)3., F.S. subsection 61B-23.0021(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	paragraphs 61B-23.0021(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	paragraph 61B-23.0021(10)(c), F.A.C.	Failure to hold runoff election.	2
Final Order	Section 718.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
Records	Section 718.111(12)(a)12., F.S.	Failure to maintain election materials for one year.	1
Records	Section 718.111(12)(a)6., F.S.	Failure to maintain minutes of meetings.	1
Records	Section 718.111(12)(b), F.S.	Failure to maintain records within Florida.	2
Reporting	Section 718.111(13), F.S.	Failure to provide the annual financial report.	2
Reporting	Section 718.111(13), F.S. paragraph 61B-22.006(7)(b),	Failure to provide year-end financial statements in a timely manner.	1

	F.A.C.		
Reporting	Section 718.111(13), F.S.	Failure to provide year-end financial statements.	2
Reporting	subsection 61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	subsection 61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.	2
Reporting	subsection 61B-22.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	subparagraphs 61B-22.006(3)(a) 1.-6., F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	paragraphs 61B-22.006(6)(a), (b), F.A.C.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.	1
Reporting	Section 718.111(13)(d), F.S.	Providing lower level of reporting for year-end financial statements than required.	2
Reserves	Section 718.112(2)(f)2., F.S. subsection 61B-22.005(3), F.A.C.	Failure to calculate reserve funds properly.	1
Reserves	Section 718.112(2)(f)2., F.S. subsection 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
Reserves	Section 718.112(2)(f)2., F.S. subsections 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	Section 718.112(2)(f)3., F.S. subsection 61B-22.005(7), F.A.C.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	Section 718.116(10), F.S.	Failure to use special assessment funds for intended purposes.	1

*Rulemaking Authority 718.501(1)(d)4., (f), 718.50153 FS. Law Implemented 718.501(1)(d)4., 718.50153 FS. History--New 6-4-98, Amended 9-3-13*

**CHAPTER 61B-22  
FINANCIAL AND ACCOUNTING  
REQUIREMENTS; BUDGETS, RESERVES, AND  
GUARANTEES**

61B-22.001	Definitions
61B-22.002	Accounting Records
61B-22.003	Budgets
61B-22.004	Guarantees of Common Expenses Under Section 718.116(9)(a)2., Florida Statutes
61B-22.005	Reserves
61B-22.006	Financial Reporting Requirements
61B-22.0062	Transition Financial Statements; Turnover Audit

**61B-22.001 Definitions.**

For the purposes of this chapter the following definitions shall apply:

(1) "Accounting records" include all of the books and

records identified in Section 718.111(12)(a)11., Florida Statutes, and any other records that identify, measure, record, or communicate financial information whether the records are maintained electronically or otherwise, including, all payroll and personnel records of the association, all invoices for purchases made by the association, and all invoices for services provided to the association.

(2) "Capital expenditure" means any expenditure of funds for:

(a) The purchase of an asset whose useful life is greater than one year in length;

(b) The replacement of an asset whose useful life is greater than one year in length; or

(c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.

(3) "Deferred maintenance" means any maintenance or

repair that:

- (a) Will be performed less frequently than yearly; and
- (b) Will result in maintaining the useful life of an asset.

(4) "Funds" means money and negotiable instruments including, for example, cash, checks, notes, and securities.

(5) "Reserves" means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by Section 718.112(2)(f)2., Florida Statutes, and any other funds restricted as to use by the condominium documents or the condominium association. Funds that are not restricted as to use by Section 718.112(2)(f), Florida Statutes, the condominium documents or by the association shall not be considered reserves within the meaning of this rule.

(6) "Turnover" means transfer of association control from developers to non-developer unit owners pursuant to Section 718.301, Florida Statutes.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(12), 718.112(2)(f), 718.301, 718.501 FS. History—New 7-11-93, Formerly 7D-22.001, Amended 12-20-95, 12-23-02.*

#### **61B-22.002 Accounting Records.**

All associations shall maintain accounting records in sufficient detail to permit determination of the revenues and expenses or receipts and disbursements attributable to separate condominiums and operating and reserve funds. Multicondominium associations shall maintain separate accounting records for the association and for each condominium operated by the association. Multicondominium associations created prior to July 1, 2000, that do not create separate ownership interests of the common surplus of the association for each unit, as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall not maintain separate fund balances for the association, and shall allocate all association revenues and expenses to each condominium operated by the association pursuant to the provisions of each condominium's declaration.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(12)(a)11., (14), 718.501 FS. History—New 7-11-93, Formerly 7D-22.002, Amended 12-20-95, 12-18-01.*

#### **61B-22.003 Budgets.**

(1) Required elements for estimated operating budgets. The budget for each association shall:

- (a) State the estimated common expenses or expenditures on at least an annual basis;

(b) Disclose the beginning and ending dates of the period covered by the budget;

(c) Show the total assessment for each unit type according to proportion of ownership on a monthly basis, or for any other period for which assessments will be due;

(d) Include all estimated common expenses or expenditures of the association including the categories set forth in Section 718.504(21)(c), Florida Statutes. Reserves for capital expenditures and deferred maintenance required by Section 718.112(2)(f), Florida Statutes, must be included in the proposed annual budget and shall not be waived or reduced prior to the mailing to unit owners of a proposed annual budget. If the estimated common expense for any category set forth in the statute is not applicable, the category shall be listed followed by an indication that the expense is not applicable;

(e) Unless the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a schedule stating each reserve account for capital expenditures and deferred maintenance as a separate line item with the following minimum disclosures:

1. The total estimated useful life of the asset;
2. The estimated remaining useful life of the asset;
3. The estimated replacement cost or deferred maintenance expense of the asset;
4. The estimated fund balance as of the beginning of the period for which the budget will be in effect; and
5. The developer's total funding obligation, when all units are sold, for each converter reserve account established pursuant to Section 718.618, Florida Statutes, if applicable.

(f) If the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a separate schedule of any pooled reserves with the following minimum disclosures:

1. The total estimated useful life of each asset within the pooled analysis;
2. The estimated remaining useful life of each asset within the pooled analysis;
3. The estimated replacement cost or deferred maintenance expense of each asset within the pooled analysis; and
4. The estimated fund balance of the pooled reserve account as of the beginning of the period for which the budget will be in effect.

(g) Include a separate schedule of any other reserve funds to be restricted by the association as a separate line

item with the following minimum disclosures:

1. The intended use of the restricted funds; and  
2. The estimated fund balance of the item as of the beginning of the period for which the budget will be in effect.

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

(3) Record keeping requirements for budgets. The minutes of the association shall reflect the adoption of the budget and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the association.

(4) Multicondominium associations. Multicondominium associations shall comply with the following requirements:

(a) Provide a separate budget for each condominium operated by the association as well as for the association. Each such budget shall disclose:

1. Estimated expenses specific to a condominium such as the maintenance, deferred maintenance or replacement of the common elements of the condominium which shall be provided for in the budget of the specific condominium;

2. Estimated expenses of the association that are not specific to a condominium such as the maintenance, deferred maintenance or replacement of the property serving more than one condominium which shall be provided for in the association budget; and

3. Multicondominium associations created after June 30, 2000, or that have created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each unit's share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets. Multicondominium associations created prior to July 1, 2000, that have not created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each condominium's share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets.

4. The budgets of multicondominium associations created after June 30, 2000 or of multicondominium associations that have created separate ownership interests of the common surplus of the association for each unit as

provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall show the estimated revenues of each condominium and of the association.

(b) Associations that operate separate condominiums in a consolidated fashion pursuant to Section 718.111(6), Florida Statutes, may utilize a single consolidated budget.

(5) Limited common elements. If an association maintains limited common elements at the expense of only those unit owners entitled to use the limited common elements pursuant to Section 718.113(1), Florida Statutes, the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the limited common elements, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may group the maintenance expense of any limited common elements for which the declaration provides that the maintenance expense is to be shared by a group of unit owners.

(6) Phase condominium budgets. By operation of law, the annual budget of a phase condominium created pursuant to Section 718.403, Florida Statutes, shall automatically be adjusted to incorporate the change in proportionate ownership of the common elements by the purchasers and to incorporate any other changes related to the addition of phases in accordance with the declaration of condominium. The adjusted annual budget shall be effective on the date that the amendment to the declaration adding a phase to a phase condominium is recorded in the official records of the county in which the condominium is located. Notwithstanding the requirements of subsection (7) of this rule, the association shall not be required to follow the provisions of Section 718.112(2)(c), Florida Statutes, unless, as a result of the budget adjustment, the assessment per unit has changed.

(7) Budget assessment amendments. The association may amend a previously approved annual budget. In order to do so the board of administration shall follow the provisions of Section 718.112(2)(e), Florida Statutes. For example, the board shall mail a meeting notice and copies of the proposed amended annual budget to the unit owners not less than 14 days prior to the meeting at which the budget amendment will be considered.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(6), 718.112(2)(e), (f), 718.113, 718.501, 718.618 FS. History—New 7-11-93, Formerly 7D-22.003, Amended 12-20-95, 12-18-01, 12-23-02.*

**61B-22.004 Guarantees of Common Expenses Under Section 718.116(9)(a)2., Florida Statutes.**

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts, declaration, or prospectus, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the voting interests of the unit owners other than the developer. Approval shall be expressed at a meeting of the unit owners, voting in person or by limited proxy; or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this rule.

(2) Guarantee period. The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

(a) The ending date or event shall be the same for all of the unit owners of a condominium, including unit owners in different phases of phase condominiums, but may vary for each condominium operated by a multicondominium association.

(b) The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

(c) The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) Maximum level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each type of unit identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a unit owner shall not exceed the maximum obligation of the unit owner based on the total amount of the adopted budget and the unit owner's proportionate ownership share of the common elements.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from unit owner assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and

(b) Expenses incurred in the production of non-

assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5) of this rule. If the expenses attributable to non-assessment revenues exceed non-assessment revenues only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately. Capital contributions collected from unit owners are not revenues, and shall not be used to pay common expenses.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period, including the full funding of the reserves unless properly waived; less

(b) The total regular periodic assessments earned by the association from the unit owners other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(c) If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created prior to July 1, 2000, the guarantor's financial obligation to the association shall be calculated as provided in paragraphs (a) and (b) for each condominium in which the guarantee existed. If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created after June 30, 2000, or within a multicondominium association created prior to July 1, 2000, that has created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, the guarantor's financial obligation to the association shall include the amount calculated pursuant to Section 718.116(9)(c), Florida Statutes.

(d) Expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5) of this rule. If the expenses attributable to non-assessment revenues exceed non-

assessment revenues only the excess expenses shall be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(2), (4), (7), (9), 718.112(2)(b)2., 718.116(9), 718.501 FS. History—New 7-11-93, Formerly 7D-22.004, Amended 12-18-01, 6-24-04.*

#### **61B-22.005 Reserves.**

(1) Reserves required by statute. Reserves required by Section 718.112(2)(f), Florida Statutes, for capital expenditures and deferred maintenance including roofing, painting, paving, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000 shall be included in the budget. For the purpose of determining whether the deferred maintenance expense or replacement cost of an item exceeds \$10,000, the association may consider each asset of the association separately. Alternatively, the association may group similar or related assets together. For example, an association responsible for the maintenance of two swimming pools, each of which will separately require \$6,000 of total deferred maintenance, may establish a pool reserve, but is not required to do so.

(2) Commingling operating and reserve funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

(3) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by Section 718.112(2)(f), Florida Statutes, shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves required by Section 718.112(2)(f), Florida Statutes, shall be based on either a separate analysis of each of the required assets or a pooled

analysis of two or more of the required assets.

(a) If the association maintains separate reserve accounts for each of the required assets, the amount of the current year contribution to each reserve account shall be the sum of the following two calculations:

1. The total amount necessary, if any, to bring a negative account balance to zero; and

2. The total estimated deferred maintenance expense or estimated replacement cost of the reserve asset less the estimated balance of the reserve account as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the asset. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

(b) If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(4) Estimating reserves that are not required by statute. Reserves that are not required by Section 718.112(2)(f), Florida Statutes, are not required to be based on any specific formula.

(5) Estimating non-converter reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established converter reserves pursuant to Section 718.618, Florida Statutes, shall be the sum of:

(a) The developer's total funding obligation, when all units are sold, for the converter reserve account pursuant to Section 718.618, Florida Statutes; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter obligation, as of the beginning of the period for which the

budget will be in effect.

(6) Timely funding. Reserves included in the adopted budget are common expenses and must be fully funded unless properly waived or reduced. Reserves shall be funded in at least the same frequency that assessments are due from the unit owners (e.g., monthly or quarterly).

(7) Restrictions on use. In a multicondominium association, no vote to allow an association to use reserve funds for purposes other than that for which the funds were originally reserved shall be effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present in person or by proxy, and a majority of those present in person or by limited proxy, vote to use reserve funds for another purpose. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts have been established.

(8) Annual vote required to waive reserves. Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by Section 718.112(2)(f)2., Florida Statutes, shall be effective for only one annual budget. Additionally, in a multicondominium association, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves. For multicondominium associations in which the developer is precluded from casting its votes to waive or reduce the funding of reserves, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of non-developer voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.112(2)(f), 718.501, 718.618 FS. History—New 7-11-93, Formerly 7D-22.005, Amended 12-20-95, 1-19-97, 12-18-01, 12-23-02.*

#### **61B-22.006 Financial Reporting Requirements.**

(1) Basis of accounting. The financial statements required by Sections 718.111(13) and 718.301(4), F.S.,

shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms "generally accepted accounting principles," "standards for accounting and review services," and "generally accepted auditing standards" shall have the same meaning as set forth in Chapter 61H1-20, F.A.C.

(2) Components. The financial statements required by Sections 718.111(13) and 718.301(4), F.S., shall at a minimum include the following components:

- (a) Accountant's or Auditor's Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows; and
- (f) Notes to financial statements.

(3) Disclosure requirements. The financial statements required by Sections 718.111(13) and 718.301(4), F.S., shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:

1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;

2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;

3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;

4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;

5. The amount of annual funding required to fully fund each reserve account, or pool of accounts, over the remaining useful life of the applicable asset or group of assets;

6. The manner by which reserve items were estimated, the date the estimates were last made, the association's policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by

the financial statements; and

7. If the developer has established converter reserves pursuant to Section 718.618(1), F.S., each converter reserve account shall be identified and include the disclosures required by this rule.

(b) The method by which income and expenses were allocated to the unit owners;

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to Section 718.116(10), F.S., and the amount of each special assessment and the disposition of the funds collected;

(d) The amount of revenues and expenses related to limited common elements shall be disclosed when the association maintains the limited common elements and the expense is apportioned to those unit owners entitled to the exclusive use of the limited common elements; and

(e) If a guarantee pursuant to Section 718.116(9), F.S., existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;
2. The amount of common expenses incurred during the guarantee period;
3. The amount of assessments charged to the non-developer unit owners during the guarantee period;
4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;
5. The amount of expenses incurred in the production of non-assessment revenues, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;
6. The amount of the developer's payments pursuant to the guarantee; and
7. Any financial obligation due to or from the developer resulting from the guarantee.

(4) **Multicondominium associations.** Multicondominium associations may present the financial statements required by Sections 718.111(13) and 718.301(4), F.S., on a combined basis as long as the financial statements, notes, or supplementary information disclose the revenues, expenses, and changes in fund balance for each condominium, and the association, as applicable. The financial statements, notes, or supplementary information shall also disclose the revenues and expenses of the association that are not directly associated with specified condominiums, and the method used to allocate such expenses to the condominiums or units, as applicable. Additionally, the reserve disclosures

required by this rule shall be presented separately for each condominium and for any association reserves not specifically identified with individual condominiums. The provisions of this rule shall apply to multicondominium financial reporting for fiscal periods ending on or after December 31, 2002. Earlier application of the provisions of this rule is permitted.

(5) **Developer assessments.** All financial reporting required by Chapter 718, F.S., shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(6) **Financial reports required by Section 718.111(13)(b), F.S..** The financial report required by Section 718.111(13)(b), F.S., shall meet the following requirements:

- (a) The report shall be prepared using a cash basis method of accounting.
- (b) The report shall include the reserve disclosures required by paragraph 61B-22.006(3)(a), F.A.C.
- (c) The report shall include the special assessment disclosure required by paragraph 61B-22.006(3)(c), F.A.C.
- (d) If the association maintains limited common elements and the expense is apportioned to those units entitled to the exclusive use of the limited common elements the report shall contain the limited common element disclosures required by paragraph 61B-22.006(3)(d), F.A.C.

(e) The financial reports of multicondominium associations shall separately disclose the following items:

1. The receipts and expenditures directly associated with specific condominiums; and
2. The receipts and expenditures of the association that are not directly associated with specific condominiums.

(7) The minutes of the association shall reflect the number of votes cast by the membership to waive the requirement for audited, reviewed, or compiled financial statements and the type of financial reporting that the association will be preparing and disseminating to the membership.

*Specific Authority 718.111(13), 718.501(1)(f) FS. Law Implemented 718.111(12)(a)11., (13), 718.301(4) FS. History—New 7-11-93, Formerly 7D-22.006, Amended 12-20-95, 2-13-97, 12-18-01, 6-24-04, 3-26-09.*

**61B-22.0062 Transition Financial Statements; Turnover Audit.**

(1) **Period covered.** The audit required by Section 718.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners

pursuant to Section 718.301(4), Florida Statutes, occurring on or after April 1, 1992. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last audit.

(2) Additional disclosure requirements for turnover audits. The financial statements, notes, or supplementary information shall present the revenues and expenses separately for each fiscal year and any interim periods included in the audit. The notes to the financial statements shall contain the following disclosures:

(a) A statement that the financial statements were prepared pursuant to Section 718.301(4)(c), Florida Statutes;

(b) A statement of total cash payments made by the developer to the association;

(c) If the developer claims to have paid common expenses of the association which do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and,

(d) If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed at any time during the period covered by the audit the financial statements shall disclose the following:

1. The period of time covered by the guarantee;
2. The amount of common expenses incurred during the guarantee period;
3. The amount of assessments charged to the non-developer unit owners during the guarantee period;
4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;
5. The amount of expenses incurred by the association in the production of non-assessment revenues, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;
6. The amount of the developer's payments pursuant to the guarantee; and
7. Any financial obligation due to or from the developer resulting from the guarantee.

*Specific Authority 718.111(13), 718.501(1)(f) FS. Law*

*Implemented 718.111(13), 718.301(4)(c) FS. History--New 7-11-93, Formerly 7D-22.0062, Amended 12-20-95, 6-24-04.*

**CHAPTER 61B-23  
THE ASSOCIATION**

- 61B-23.001 Board of Administration and Committees; Fiduciary Duty
- 61B-23.002 Operation of the Association
- 61B-23.0021 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death; Election Monitors
- 61B-23.00211 Electronic Voting
- 61B-23.00215 Ombudsman; Election Monitoring; Monitor's Role; Scope and Extent
- 61B-23.0022 Contracts for Bid: Employees
- 61B-23.0026 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting
- 61B-23.0027 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies
- 61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies
- 61B-23.0029 Electronic Transmission of Notices
- 61B-23.003 Transition from Developer Control
- 61B-23.0051 Cable Television Service

**61B-23.001 Board of Administration and Committees; Fiduciary Duty.**

(1)(a) "Meeting of the board of administration" means any gathering of the members of the board of directors, at which a quorum of the members is present, for the purpose of conducting association business.

(b) "Committee meeting" means any gathering of a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board at which a quorum of the members of that committee is present. For example, a meeting of an executive committee, as defined in Section 617.0825, F.S., or as that section may subsequently be renumbered, would be included in this definition as would a meeting of a group charged with developing a proposed budget.

(2) Unit owners have the right to attend and observe all meetings of the board of administration and its committees.

(3) Where the declaration, articles of incorporation, or bylaws preclude non-unit owners from serving on the

association's board of administration, one acting under a power of attorney from a unit owner is similarly precluded from serving on the board unless he or she is a unit owner.

(4) In furtherance of its fiduciary duty to the unit owners, a board of administration shall employ only a licensed community association manager where licensure is required by Section 468.431, F.S.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.111(1), 718.112(2)(c),(k) FS. History—New 7-22-80, Amended 7-6-81, 8-31-83, 12-4-83, 10-1-85, Formerly 7D-23.01, Amended 1-27-87, 9-7-88, 7-17-91, 12-20-92, Formerly 7D-23.001, Amended 2-22-94, 4-14-99.*

### **61B-23.002 Operation of the Association.**

(1) Each association which operates more than 2 units shall pay an annual fee of \$4 for each unit in a residential condominium operated by the association. If the declaration is amended during the year to alter the number of units or to add additional phases containing units, the association shall pay the annual fee on the highest number of declared units during the year. The fee shall be paid as follows:

(a) The division shall provide to the association an annual fee statement. The failure to receive the Annual Fee Statement shall not relieve the association of the obligation to pay the fee. Annual fees shall be paid online at [www.MyFloridaLicense.com](http://www.MyFloridaLicense.com) or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(b) The initial annual fees are due for the year in which a declaration of condominium is recorded. Payment shall be made within 30 days of recordation of the declaration or amendments creating subsequent phases. Payment shall be submitted to the division along with the notice of recordation required by subsection 61B-17.001(4), F.A.C.

(c) Subsequent annual fees are due on or before January 1 of each year.

(2) The association shall, within 30 days of a change of address, notify the division of its new mailing address.

(3) Each association that votes to forego retrofitting of the common elements, association property, or units of a residential condominium with a fire sprinkler system, or the common elements or units of a residential condominium with handrails or guardrails, shall report the voting results and certification information for each affected condominium to the division on DBPR Form CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS, incorporated herein by reference and effective 11-30-04. If retrofitting has been undertaken by a residential condominium, the association shall report the per-unit cost of such work to the division on DBPR Form CO 6000-8. DBPR Form CO 6000-8 must be filed with the division within 60 days of recordation of the retrofitting

waiver certificate in the public records where the condominium is located or upon commencement of the retrofitting project. DBPR Form CO 6000-8 may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, Florida 32399-1030. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system and the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year.

(4)(a) As provided for by Sections 718.1085 and 718.112(2)(1), F.S., any vote to waive a retrofitting requirement shall be held at a duly called meeting of the membership, with members voting live and in person, or may be conducted without a membership meeting by written consents, or may be conducted by a combination of the two with the association counting written consents received along with votes cast live and in person at a duly called meeting of the membership. Effective October 1, 2004, retrofitting requirements related to a fire sprinkler system may also be waived by the use of limited proxies cast at a duly called meeting of the membership.

(b) The written consent form utilized by the association must contain a space for the authorized voter to sign and must identify the unit owned. Voting by written consents or written agreements may be utilized by an association regardless of whether the bylaws or the declaration specifically permit voting by written consents or written agreements.

(5) Unit owners shall not, except as provided by Section 718.112(2)(b)2., F.S., vote by general proxy, but may vote by limited proxy substantially similar to the SAMPLE LIMITED PROXY FORM adopted by the division as DBPR Form CO 6000-7, incorporated herein by reference and effective June 23, 2009. The form may be obtained by writing the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030 or may be downloaded at <http://www.myflorida.com/dbpr/lsc/LSCMHCondominiumForms.html>.

(6) If the declaration, articles of incorporation or association bylaws require or authorize the use of voting certificates, the voter named on such certificate is the only person authorized to appoint a proxy even though the unit is owned by more than one person or entity or is owned by an entity which is not a natural person.

(7)(a) Beginning April 1, 1992, each association must prepare and maintain as part of its official records, a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR form CO 6000-4, as referenced in Rule 61B-17.001, F.A.C. The association shall update the information provided in the answers to the

Frequently Asked Questions and Answers Sheet and prepare a revised sheet every 12 months beginning from when the sheet was last revised. The answers to the questions may be summary in nature, in which case the answer shall refer to identified portions of the condominium documents.

(b) Other records related to the operation of the association, which the association shall maintain as official records pursuant to Section 718.111(12)(a)15., F.S., or as that subparagraph may be subsequently renumbered, shall include, for example:

1. Correspondence and other written communication from the division;

2. A copy of all insurance records; and

3. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

(c) Those copies of the declaration, articles of incorporation, bylaws, and amendments to the foregoing, which the association is required to keep pursuant to Section 718.111(12)(c), F.S., are the recorded declaration, recorded articles of incorporation, recorded bylaws, including exhibits, and the recorded amendments to each. The association may charge its actual costs for preparing and furnishing these documents to those requesting the same.

(8) For the purposes of establishing a quorum at any association meeting only the voting interests present in person or by proxy shall be counted. The written joinder or absentee ballot of a unit owner may not be utilized to establish a quorum.

(9) Subject to reasonable restrictions, any unit owner has the right to speak at unit owner meetings, with respect to all designated agenda items. On or after April 1, 1992, subject to reasonable restrictions, any unit owner has the right to speak at board meetings and committee meetings with respect to all designated agenda items.

(10) Any unit owner may tape record or videotape meetings of the board of administration, committee

meetings, or unit owner meetings, subject to the following restrictions:

(a) The only audio and video equipment and devices which unit owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions.

(b) If adopted in advance by the board or unit owners as a written rule, audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(c) If adopted in advance by the board or unit owners as a written rule, anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

(d) If adopted in advance by the board or unit owners as a written rule, advance notice shall be given to the board by any unit owner desiring to utilize any audio or video equipment.

(e) Unit owners are entitled to tape record or videotape board meetings and committee meetings occurring on or after April 1, 1992.

*Rulemaking Authority 718.112(2)(b)2., (c), (d)8., 718.501(1)(f) FS. Law Implemented 718.1085, 718.111(12), 718.112(2)(b)1., 2., 3., (c), (d)8., (f)4., (l), 718.501(2)(a), 718.504 FS. History—New 7-22-80, Amended 8-31-83, 10-1-85, Formerly 7D-23.02, Amended 1-27-87, 7-10-88, 3-21-89, 2-18-92, Formerly 7D-23.002, Amended 11-23-93, 2-20-97, 4-14-99, 12-23-02, 1-28-04, 11-30-04, 6-23-09, 2-22-15, 9-1-15.*

**61B-23.0021 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death; Election Monitors.**

(1)(a) Unless otherwise provided herein, the provisions of this rule apply to all regular and run-off elections conducted by a condominium association, regardless of any provision to the contrary contained in the declaration, articles of incorporation, or bylaws of the association.

(b) Except as otherwise provided by Rules 61B-23.0027 and 61B-23.0028, F.A.C., the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-23.0026 through 61B-23.0028, F.A.C.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 718.112(2)(d), F.S., an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association's bylaws. Such vote must be taken on or after June 14, 1995.

The phrase “different voting and election procedures” as used in this rule and as used in Section 718.112(2)(d), F.S., refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to Section 718.112(2)(d)9., F.S., to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances.

(2) A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the unit owners, regardless of whether a quorum is attained for the meeting.

(3) A board of administration shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the board. A board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the board.

(4) The first notice of the date of the election, which is required to be mailed, electronically transmitted, or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association. The first notice must also disclose the procedure and deadline to consent to electronic voting, if the board of administration has provided for and authorized an online voting system. Failure to follow the procedures for giving the first notice of the date of the election shall require the association to conduct a new election, if the election has been conducted. Where the election has not occurred, the association shall mail, transmit, or deliver an amended first notice to the eligible voters not less than 60 days before the scheduled election, which shall explain the need for the amended notice. If an amended notice cannot be mailed, transmitted or delivered not less than 60 days

before the election, then the association must re-notice and reschedule the election.

(5) A unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Written notice shall be effective when received by the association. Written notice shall be accomplished in accordance with one or more of the following methods:

(a) By certified mail, return receipt requested, directed to the association; or

(b) By personal delivery to the association; or

(c) By regular U.S. mail, facsimile, telegram, or other method of delivery to the association.

(6) Upon receipt by the association of any timely submitted written notice by personal delivery that a unit owner or other eligible person desires to be a candidate for the board of administration, the association shall issue a written receipt acknowledging delivery of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate’s background, education, and qualifications. The information contained therein shall not exceed one side of the sheet, which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. The failure of an association to mail, transmit or personally deliver a copy of a timely delivered information sheet of each eligible candidate to the eligible voters shall require the association to mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include the information sheet(s) not included with the initial second notice. If an amended second notice cannot be timely mailed, transmitted or delivered, the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renotice the election following the procedures as set forth in subsection (8) of this rule. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the association.

(8) In accordance with the requirements of Section 718.112(2)(d), F.S., the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the board that endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

(9)(a) The ballot shall indicate in alphabetical order by surname each and every unit owner or other eligible person who desires to be a candidate for the board of administration, and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has withdrawn his candidacy in writing prior to the mailing of the ballot. The failure of the ballot to indicate the name of each eligible person shall require the association to mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include a revised ballot with the names of all eligible persons. If an amended second notice cannot be timely mailed, transmitted or delivered, then the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renote the election following the procedures as set forth in subsection (8) of this rule. No ballot shall indicate which candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests in a condominium are not entitled to one whole vote (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all

ballot forms utilized by a condominium association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(b) If the ballot includes the name of any ineligible person, the association shall mail, transmit, or deliver an amended second notice within the time required by this rule, which shall explain the need for the amended notice and include a revised ballot with the names of only the eligible persons. If an amended second notice cannot be timely mailed, transmitted or delivered, then the association must re-notice and reschedule the election following the procedures as set forth in subsection (8) of this rule. If the election has already occurred, the election is deemed void and the association must renote the election following the procedures as set forth in subsection (8) of this rule. This paragraph (b) does not apply to a ballot that includes the name of any ineligible person who became ineligible after the deadline for filing a notice of intent to be a candidate.

(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b). The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes or

accessing of the electronic votes, whichever occurs first, the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked "Disregarded", or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;
2. Officers; and
3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the association shall, unless otherwise provided in the bylaws, conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a notice of a runoff election. The only candidates eligible for the runoff election to the board position are the runoff candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the runoff election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the association. The runoff election must be held not less than 21 days, nor more than 30 days, after the date of the election at which the tie vote occurred.

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

(12) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the board of

administration or other unit owner to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice.

(13) At a minimum, all voting machines shall meet the following requirements:

(a) Shall secure to the voter secrecy in the act of voting;

(b) Shall permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for, but no more;

(c) Shall correctly register or record, and accurately count all votes cast for any and all persons;

(d) Shall be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read the ballots; and

(e) Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

(14) Notices of election, notices of candidacy for election, information sheets, voting envelopes, written approval of budgets, written agreements for recall of board members, ballots, sign-in sheets, voting proxies, and all other papers or electronic records relating to voting by unit owners shall be maintained as part of the official records of the association for a period of 1 year from the date of the election, vote, or meeting to which the document relates.

(15) Election Monitors. The procedures for filing a petition for the appointment of an election monitor are contained in Rule 61B-23.00215, F.A.C.

*Rulemaking Authority 718.112(2)(d)4., 718.501(1)(f) FS. Law Implemented 718.112, 718.128 FS. History—New 1-23-92, Amended 12-20-92, Formerly 7D-23.0021, Amended 8-24-94, 12-20-95, 1-19-97, 4-14-99, 2-19-01, 12-23-02, 8-7-05, 8-28-06, 3-21-16.*

#### **61B-23.00211 Electronic Voting.**

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

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

(3) The board resolution required by Section 718.128(4), F.S., must provide that all unit owners receive

notice of the opportunity to vote through an online voting system when the association utilizes online voting. The opportunity to vote online must be included in the notice of the meeting requiring the vote.

(4) The electronic voting system must provide the unit owner with a receipt of their vote, which must include the specific vote cast, the date and time of submission, and the user identification.

(5) The electronic voting system must produce an official record that the association must maintain, which identifies the specific votes cast on each ballot and the date and time of receipt of the electronically submitted ballot.

(6) For elections, electronic votes shall not be accessible to the association prior to the scheduled election. Failure to comply with this subsection will void the election and the association must renote the election following the procedures as set forth in subsection 61B-23.0021(8), F.A.C.

*Rulemaking Authority 718.112(2)(d)4., 718.501(1)(f) FS. Law Implemented 718.128 FS. History–New 3-21-16.*

#### **61B-23.00215 Ombudsman; Election Monitoring; Monitor's Role; Scope and Extent.**

(1) Fifteen percent of the total voting interests entitled to vote at the annual meeting of unit owners for the election of directors, or the owners of six units entitled to vote at the annual meeting of unit owners for the election of directors, whichever number is greater, may petition the ombudsman for the appointment of an election monitor to attend the annual meeting of unit owners for the election of directors and conduct the election of directors. No monitor shall be appointed for a special election, an interim election, a runoff election, an election to fill vacancies caused by a recall of one or more board members, or any election other than the annual meeting of unit owners for the election of directors.

(2)(a) Form of petition. In order to file a petition for the appointment of an election monitor, a unit owner must complete DBPR FORM CO 6000-9, PETITION FOR APPOINTMENT OF ELECTION MONITOR, incorporated by reference and effective 8-7-05, available by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe, Tallahassee, Florida 32399-1030, or shall use a substantial equivalent of the form which shall contain the following information. The form must, as applicable:

1. State that the purpose of the petition is to seek signatures for the appointment of an election monitor by the ombudsman for the annual meeting of unit owners for the election of directors;

2. Contain a signature space for authorized unit owners or voting interests to sign and must provide a space for those signing the petition to provide his or her name;

3. Identify his or her unit number;

4. Supply the date that each unit owner signed the petition;

5. Provide the name of an individual who is authorized to represent the unit owners petitioning for the appointment of an election monitor, along with the mailing address, telephone number, fax number, and email address of the representative;

6. Indicate that if a monitor is appointed, the association and all its members shall be obligated to pay the costs and fees of the monitor; and

7. State the total number of voting interests in the association.

8. Briefly state the basis for having an election monitor appointed (optional).

9. State the date, place, and time of the election.

(b) Only the signatures of those persons who are unit owners of record shall be counted in the calculation to determine whether the minimum number of votes have been cast in favor of requesting the appointment of a monitor.

(3) Time to file. The petition for appointment of an election monitor must be filed with the ombudsman not less than 14 days in advance of a planned election to provide sufficient time to process the petition, provide for verification of the signatures, and appoint a monitor.

(4) Once the ombudsman has received a timely filed petition for appointment of an election monitor, the ombudsman shall examine the petition to ensure that all required information is provided and that a sufficient number of voting interests have signed the petition.

(a) If the petition is deficient, the ombudsman shall provide the petitioners with notice of the deficiencies, and petitioners will have 5 calendar days from receipt of such notice to timely correct the petition, or if the deficiencies cannot be corrected, the petition shall be denied and the materials shall be returned to the unit owners petitioning for appointment of an election monitor.

(b) Within 5 calendar days of the determination that a petition is complete and sufficient, the ombudsman shall provide a copy of the petition to the association by certified mail, along with a notice that a petition for appointment of election monitor has been filed with the ombudsman. Where the determination that a petition is complete and sufficient is made within 5 days of a scheduled election, the ombudsman shall immediately provide a copy of the petition to the association upon making such determination of completeness.

(5) Once a petition has been found to be adequate, the ombudsman shall appoint an election monitor as provided by the provisions of Section 718.5012(9), F.S., and this

rule. Any appointment of a division employee shall be subject to the approval of the division director.

(6) The appointed monitor shall review any documents provided by the petitioners or by the association in advance of the scheduled election and shall attend and conduct the election in person.

(7) The monitor shall conduct the election, but where a division employee is appointed as monitor, the employee shall not provide direct advice or suggestions to the association or to individual owners in the course of the election. Each monitor shall submit a report regarding the election to the ombudsman, and to the parties, within 14 days following the date the election is concluded.

(8) Where a division employee has been approved to be appointed as the election monitor, the division shall prepare an itemized statement of costs and expenses and shall submit the statement and a request for reimbursement to the association along with the monitor's report. The association shall have 30 days in which to reimburse the division. It shall be considered a violation of this rule for an association not to timely reimburse the division for all costs and expenses associated with the election monitoring process.

(9) Where a monitor is appointed who is not a division employee, the division will not enforce the billing and collection of amounts owed to the monitor. Nothing in these rules prohibits a private monitor from requiring the association to pre-pay all or part of the reasonable fees and costs of the monitor.

*Rulemaking Authority 718.5012(9) FS. Law Implemented 718.1255, 718.5012(9) FS. History—New 8-7-05.*

#### **61B-23.0022 Contracts for Bid: Employees.**

In accordance with the provisions of Section 718.3026, F.S., contracts with employees of the association shall not be subject to the provisions of that section. For purposes of this rule, a worker shall be considered an employee of an association where the association pays or deducts, for or on behalf of the worker, social security tax, unemployment compensation taxes, and federal withholding taxes.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.3026 FS. History—New 4-1-92, Formerly 7D-23.0022.*

#### **61B-23.0026 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting.**

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, F.S., or Rule 61B-23.003, F.A.C., the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, F.S., or Rule 61B-23.003, F.A.C., the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners other than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the declaration provides that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of Section 718.112(2)(j), Florida Statutes, that may recall or remove such board member or members.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.112, 718.301 FS. History—New 12-20-92, Formerly 7D-23.0026, Amended 12-20-95.*

#### **61B-23.0027 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.**

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the condominium documents, 10 percent of the voting interests may call a meeting of the

unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “condominium documents” means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled;

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the condominium documents. If the association is unincorporated, notice shall be mailed or delivered

according to the time requirements stated in the condominium documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the condominium documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date when the notice of the recall meeting is mailed or delivered, unless otherwise provided in the condominium documents. If the association is unincorporated, the meeting shall be held within the times required by the condominium documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative’s name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, the specific seat each replacement board member was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of Section 718.112(2)(d), F.S., and Rule 61B-23.0021, F.A.C., to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of Section 718.301, F.S., and Rules 61B-23.003 and 61B-23.0026, F.A.C., shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or,

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

3. Upon certification of the recall by the board; or,

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall

properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members by vote at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, F.A.C., on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., Florida Statutes, and Rule 61B-23.0021, F.A.C., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the board. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement board members elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by Section 718.112(2)(j), F.S., and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, F.S., or as that section may subsequently be renumbered, shall not be

included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 683.01, F.S., shall be included.

*Rulemaking Authority 718.112(2)(j)5., FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0027, Amended 8-24-94, 12-20-95, 2-19-01.*

**61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.**

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a board member or members;

(d) Provide a space for the person signing the written agreement to state his name, identify his unit and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the condominium documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section

110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board member or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a board member, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, F.S., and the procedures for service of subpoenas as set out in Rule 1.410(d), Florida Rules of Civil Procedure; and

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. Written recall ballots do not expire through the passage of time, however, written recall ballots become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited proxy given by the unit owner(s) of record.

(k) Any rescission or revocation of a unit owner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more board members shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of

Section 718.301, F.S., and Rules 61B-23.003 and 61B-23.0026, F.A.C., regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. As utilized in this rule, the phrase "condominium documents" means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, F.A.C., on the proposed replacement member; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., F.S., and Rule 61B-23.0021, F.A.C., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement board members elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking Office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or,

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

(c) Upon certification of the recall by the board; or,

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of Five Full Business Days. In computing the five full business days prescribed by Section 718.112(2)(j), F.S., and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 110.117, F.S., or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 110.117, F.S., shall be included.

*Rulemaking Authority 718.112(2)(j)5. FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0028, Amended 12-20-95, 2-19-01, 6-7-04.*

#### **61B-23.0029 Electronic Transmission of Notices.**

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

(2) Association Notices.

(a) Associations may opt to deliver meeting notices by electronic transmission by following these rules or by adopting bylaws that are consistent with these requirements.

(b) Associations that decide to stop delivery of notices by electronic transmission shall notify all owners by electronic transmission of the date on which electronic transmission of notices will cease. Associations must mail the notice to those owners whose consent has been revoked or was never given.

(3)(a) Consent and Revocation of Consent. In order to be effective, any consent given by a unit owner to receive notices via electronic transmission, and any revocation of

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

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

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

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

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

has been sent to the same owner or owners via electronic transmission.

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

*Rulemaking Authority 718.112(2)(d)3., 718.501(1)(f) FS. Law Implemented 718.111(12)(a)7., 718.112(2)(c), (d)2., 3., 5., (e) FS. History—New 7-27-06.*

#### **61B-23.003 Transition from Developer Control.**

(1) When an association will operate more than one condominium, unit owners other than the developer are entitled to elect no less than one-third of the members of the board of administrators when they own fifteen percent of the units in any one condominium to be operated by the association. The basis upon which unit owners other than the developer are entitled to elect not less than a majority of the board of administrators is determined according to the percentage of units conveyed to purchasers in all condominiums that will be operated ultimately by the association. The developer is entitled to elect at least one member of the board of administrators as long as it holds for sale in the ordinary course of business the percentage of units provided by law in any one condominium operated by the association.

(2) A developer may establish a transition committee or committees to involve unit owners in an advisory capacity with regard to the operation of the condominium prior to assumption of control of the association by unit owners other than the developer. However, establishment of such committee does not relieve the developer from any obligations under Section 718.301, F.S.

(3) Association funds shall be used only for association purposes and may not be expended for the purposes of the developer, including but not limited to sales and promotional activities, utilities or other costs for construction activities or repair or replacement which is within the warranty obligations of the developer, nor may association personnel be used for such purposes at association expense.

(4) The developer shall pay the costs for the preparation or duplication of the documents required by Section 718.301(4), F.S., to be provided the unit owner

controlled association upon transfer of association control, including the costs and accountant's fees incurred in preparing the financial statements required by Section 718.301(4)(c), F.S.

(5) Within 10 business days after the election of the first unit owner, other than the developer, to the board of administration, the developer shall forward to the division, in writing, the name and mailing address of the unit owner board member.

(6) The developer or developer's agent shall obtain a receipt for transfer of condominium documents to the unit owner controlled association. The receipt shall include a listing of all the items for each condominium operated by the association outlined under Section 718.301(4), F.S. Said receipt shall contain the date of transfer of the records and shall be signed by both the developer and a non-developer unit owner board member. A copy of said receipt shall be given to the association. Both parties shall retain the receipt for a period of 7 years. Said receipt shall not constitute a waiver of unit owner or association rights with respect to completeness and accuracy of the transfer of condominium documents or preclude administrative remedies available to the division.

(7)(a) For purposes of computing the percentages of units conveyed to purchasers which will entitle unit owners other than the developer to elect not less than a majority of the members of the board of administration, units sold or otherwise transferred in a bulk transfer by the current developer shall be utilized in the above computation for a turnover of control of the association board unless the sale or other transfer is accompanied by an assignment of the developer's rights to the grantee or transferee. If an assignment of developer rights does not accompany the bulk transfer, in all instances the units sold or otherwise transferred shall be utilized in the computation for a turnover.

(b) As utilized in this rule, the term "bulk transfer" means any sale or other transfer of two or more units in one condominium to the same person, including but not limited to units conveyed through foreclosure, deed in lieu of foreclosure or any other transfer or sale, whether voluntary or involuntary.

(c) As utilized in this rule, the phrase "assignment of developer rights" refers only to a written agreement whereby the current developer expressly transfers to the grantee or transferee all developer rights and existing obligations under the declaration of condominium, including any exhibits thereto; under Chapter 718, F.S., including the provisions of Section 718.203, F.S.; and under these rules.

(d) If the transferee or grantee receives an assignment of developer rights, the transferee or grantee shall have the voting rights of the current developer as provided in the

declaration, articles of incorporation or association bylaws and the Condominium Act.

(e) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee is not and does not become a developer as defined by Rule 61B-15.007, F.A.C., such transferee or grantee is entitled to vote for a majority of the members of the board of administration.

(f) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee, at the time of such transfer or at a subsequent time becomes a developer as defined by Rule 61B-15.007, F.A.C., such developer is entitled to vote for a majority of the members of the board of administration so long as such developer is offering units for sale in the ordinary course of business as defined in Rule 61B-15.007 and subsection 61B-15.0011(6), F.A.C. If, however, such developer is not offering units for sale in the ordinary course of business as defined in Rule 61B-15.007 and subsection 61B-15.001(6), F.A.C., such developer is not entitled to vote for a majority of the members of the board of administration.

(g) If during the time such developer, pursuant to the provisions of paragraph (f) of this rule, is entitled to vote for a majority of the members of the board of administration, such developer is responsible for any violation of the Condominium Act or these rules by the association committed during the time such developer controls the association by voting more than 50 percent of the voting interests of the association. Further, such developer shall provide the association with an audit of the association financial records in the manner provided in Section 718.301(4)(c), F.S., and Rule 61B-22.0062, F.A.C., for the period such developer controls the association regardless of the fiscal period required by subsection 61B-22.0062(1), F.A.C.

(8) In accordance with Section 718.301(1)(d), F.S., after turnover of control of an association, the developer who relinquishes control may vote in the same manner as any other unit owner. However, the relinquishing developer may not vote for a majority of the board of administration; nor shall the developer vote on matters for which a vote of unit owners other than the developer is allowed or required by Chapter 718, F.S., or by division rules. For example, the developer may not vote its interests in determining whether to cancel an association agreement under Section 718.302, F.S.

(9) In condominiums created on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration not later than 7 years after recordation of the declaration. In the case of an association which may ultimately operate more than one condominium, where the initial condominium operated by the association is created on or after January 1, 1992, unit owners other than the

developer are entitled to elect not less than a majority of the members of the board not later than 7 years after recordation of the declaration of the initial condominium. In the case of a phase condominium created pursuant to Section 718.403, Florida Statutes, where the declaration submitting the initial phase or phases is recorded on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board not later than 7 years after the recordation of the declaration submitting the initial phase or phases.

*Rulemaking Authority 718.301(6), 718.501(1)(f) FS. Law Implemented 718.111(1), 718.301 FS. History—New 7-22-80, Amended 3-18-82, 8-31-83, 5-21-84, 10-1-85, Formerly 7D-23.03, Amended 1-27-87, 4-1-87, 3-21-89, 4-1-92, 7-11-93, Formerly 7D-23.003, Amended 1-19-97.*

#### **61B-23.0051 Cable Television Service.**

(1) “Cable television service,” as used in Section 718.115(1)(d)2., F.S., shall mean the transmission of video programming by a duly franchised cable company, as provided in Section 166.046, F.S., or as that section may be subsequently renumbered, pursuant to a contract between the association and such duly franchised cable company. For the purposes of this rule, cable television service shall include any master antenna or community antenna television system.

(2) “Legally blind,” as used in Section 718.115(1)(b), F.S., shall mean having central visual acuity of 20/200 or less in the better eye with corrective glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees.

(3) “Hearing impaired,” as used in Section 718.115(1)(d)2., F.S., shall mean:

(a) An individual who has suffered a permanent hearing impairment and is not able to discriminate speech sounds in verbal communication, with or without the assistance of amplification devices; or

(b) An individual who has suffered a permanent hearing impairment which is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

(4) A legally blind or hearing impaired unit owner seeking to discontinue cable television service in accordance with Section 718.115(1)(d)2., F.S., shall furnish proof to the board of directors of the association that the individual is legally blind or hearing impaired. The association shall accept as proof of the impairment a statement attesting to such impairment from one of the following:

(a) A licensed physician, audiologist, or speech pathologist;

(b) A state certified teacher of the visually impaired or of the hearing impaired; or

(c) An appropriate state or federal agency.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.115(1)(d) FS. History—New 11-23-93.*

## **CHAPTER 61B-24**

### **CREATION OF CONDOMINIUM BY CONVERSION**

61B-24.001	Definitions; Creation of Condominium by Conversion
61B-24.002	Notices of Intended Conversion
61B-24.003	Rental Agreement Extensions (Repealed)
61B-24.004	Disclosure of Building Condition
61B-24.005	Right of First Refusal
61B-24.006	Economic Information (Repealed)
61B-24.007	Converter Reserve Accounts; Warranties; Disclosures

#### **61B-24.001 Definitions; Creation of Condominium by Conversion.**

(1) “Tenant” means a party to a rental agreement in residential occupancy of a place rented for the purpose of maintaining a place of residence. The term “tenant” excludes a party to a rental agreement or other person in transient occupancy.

(2) “Transient occupancy” means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is non-transient. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(3) Section 718.402, Florida Statutes, states that a developer creating a condominium by conversion must comply with Parts I and VI of the Condominium Act in order to create a condominium. The creation of the real property condominium ownership form is achieved when the developer complies with Part I of the Condominium Act.

*Rulemaking Authority 718.501(1)(f) FS. Law Implemented 718.104, 718.402, 718.606, 718.608 FS. History—New 7-2-81, Formerly 7D-24.01, 7D-24.001.*

### **61B-24.002 Notices of Intended Conversion.**

(1) Prior to delivery to tenants, each developer of a conversion shall file with the division and receive acceptance of its notice of intended conversion.

(a) After the division receives a proposed notice of intended conversion and the \$100 filing fee it shall, within 20 days, inform the developer by mail that the division has accepted the notice or reviewed the notice and determined specific deficiencies.

(b) The developer shall have 20 days from the date of the division's notification of deficiencies in the notice to correct such deficiencies.

(c) The division shall notify the developer within 20 days from receipt of a corrected notice whether the corrected notice remains deficient or whether the corrected notice is accepted.

(2) Each developer of a conversion is required to give tenants a notice of intended conversion which has been accepted by the division. The developer is required to send the notice by certified or registered mail. The notice is deemed given to the tenant on the date when it is mailed. A tenant's refusal of receipt of a notice of intended conversion does not affect the validity of the notice.

(a) When a tenant has refused receipt of a notice of intended conversion the developer may post the notice, personally deliver it to the tenant, mail the notice by regular mail or provide notice in any other reasonable manner.

(b) This subsection shall not be construed to require a developer to provide additional notice of intended conversion to any tenant who refuses receipt of a notice of intended conversion given in the manner prescribed by Part VI of the Condominium Act.

(3) Each notice of intended conversion shall state the address of the developer.

(a) The address stated shall be an address at which tenants may personally deliver or mail their responses to the notice of intended conversion.

(b) A developer may list more than one address in a notice of intended conversion. A developer may list a street address to which tenants may mail or personally deliver their responses to the notice and a post office box address to which tenants' responses may be mailed.

(4) Each notice of intended conversion shall state the address or specific location of the property to be converted to condominium, above the text set forth by Section 718.608, Florida Statutes.

(5) For the purpose of each notice of intended conversion the Tallahassee address and telephone number

of the division is:

Division of Florida Condominiums, Timeshares, and  
Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1033  
(800) 226-9101

(6) Each notice of intended conversion is required to include the text set forth by Section 718.608, Florida Statutes. A developer may make statements supplemental to the notice of intended conversion. These statements shall not be misleading or inconsistent with the statutory text of the notice of intended conversion or any provision of the Condominium Act, and no additional statements may be interspersed with the statutorily required text.

(7) When a developer sends a tenant more than one notice of intended conversion, any tenant who has responded to any prior notice of intended conversion shall be deemed to have responded to any subsequent notice of intended conversion as amended, provided, upon receipt of a subsequent notice of intended conversion a tenant may respond to that notice as amended, and such response shall supersede any prior response that the tenant may have given.

(8) Each notice shall be dated with the date when the notice is mailed.

*Rulemaking Authority 718.501(1)(f), 718.608(5), 718.621 FS. Law Implemented 718.608(5) FS. History—New 7-2-81, Formerly 7D-24.02, Amended 4-1-92, Formerly 7D-24.002, Amended 12-23-02, 2-7-06.*

### **61B-24.003 Rental Agreement Extensions.**

*Rulemaking Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.606 FS. History—New 7-2-81, Formerly 7D-24.03, 7D-24.003, Repealed 12-12-11.*

### **61B-24.004 Disclosure of Building Condition.**

(1)(a) Disclosure of building condition is required in order that prospective purchasers be informed as to the scope and magnitude of the financial responsibility that condominium ownership entails. Section 718.616, Florida Statutes (Supp. 1980), sets forth the information that shall be disclosed and components for which disclosure of condition is made. Disclosure of condition is required for all property and each of the components listed by the statute to the extent that the improvements include any of the components.

(b) Disclosure of condition is required for all condominium property, in particular condominium

property intended for use in connection with the condominium. The disclosure of condition requirement applies to property owned by an association, and applies to property owned by a master property owners' association when the repair, replacement or maintenance of such property constitutes a common expense or when such property is condominium property.

(2) The disclosure of the age of each component is measured in years from the later of:

(a) The date when the installation or construction of the existing component was completed; or

(b) The date when the component was replaced or substantially renewed. It is not required that the developer certify that the replacement or renewal at least met the requirements of the then applicable building code.

(3) In a phased condominium conversion, disclosure of replacement cost information shall be stated on the basis of:

(a) All phases previously converted to condominium and all phases being offered in the documents; and

(b) All phases that may ultimately be converted to condominium and all phases that have been converted to condominium.

(4) The disclosure of building condition statement shall include the following information:

(a) The date when the statement was prepared.

(b) The date when the improvements were inspected for the preparation of the statement.

(c) The date when the construction of the improvements was completed, evidenced by a copy of the certificate of occupancy, or equivalent authorization, issued for the improvements. When a building is located in a jurisdiction in which certificates of occupancy or equivalent authorizations are not issued, the date when substantial completion of construction of the improvements in accordance with the plans and specifications shall be stated.

(5) The copy of the disclosure statement filed with the Division shall be certified under seal of a architect or engineer authorized to practice in this State.

*Rulemaking Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.616, 718.618, 718.103(11), 718.503(2),(1), 718.504(15) FS. History--New 7-2-81, Formerly 7D-24.04, 7D-24.004.*

#### **61B-24.005 Right of First Refusal.**

(1) A developer may offer a unit to a tenant at more than one price provided that all prices are offered to the tenant during the full right of first refusal period.

(2) A developer may not require a purchasing tenant to close on a purchase prior to the expiration of the tenant's rental agreement or any rental agreement extension period, provided, a developer may establish a higher price for the unit when a tenant elects a later closing. Time of closing shall be determined by developer and tenant negotiation.

(3) A tenant bringing an action for specific performance to enforce a right of first refusal may record a lis pendens prior to the closing on the sale of the unit to a third party.

(4) The right of first refusal exists to provide tenants the opportunity to continue their residence. Any restrictive covenant that would prevent a purchasing tenant from continuing residence in a unit purchased under the right of first refusal is unenforceable against such tenant.

*Rulemaking Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.612 FS. History--Amended 9-6-81, Formerly 7D-24.05, 7D-24.005.*

#### **61B-24.006 Economic Information (Repealed)**

*Rulemaking Authority 718.501(1)(f), 718.614(2) FS. Law Implemented 718.501(1)(e), 718.614(2) FS. History--New 7-2-81, Formerly 7D-24.06, 7D-24.006, Amended 2-22-94, 7-14-08, Repealed 10-28-08.*

#### **61B-24.007 Converter Reserve Accounts; Warranties; Disclosures.**

(1)(a) The funding of roof reserve accounts is based on the square foot surface area of the roof. The term "roof" does not include sloped siding that is not a part of a roof structure, does not serve the purpose of a roof and the deterioration of which would not result in damage to the interior of the improvements.

(b) The age of any component or structure, for which the developer is funding a reserve account, shall be measured –

1. Beginning with the later of:

a. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then applicable building code; or

b. The date when the installation or construction of the existing component or structure was completed; and

2. Ending with the date when the first unit is sold.

(2) When a developer is deemed to have granted to the

purchaser of each unit an implied warranty, the term of the warranty is as follows:

(a)1. For a three year period beginning with the date of the notice of intended conversion; or

2. For a three year period beginning with the date of the recording of the declaration of condominium; whichever period begins last; and continuing thereafter through.

(b) One year after the date when owners other than the developer obtain control of the association. Provided, the term of the warranty shall not exceed more than five years after later of: the date when the notice of conversion was given and the date when the declaration of condominium was recorded.

(3) The developer shall disclose in the documents required to be furnished purchasers the type of post-purchase protection that is to be provided: funded reserve accounts, warranties, or reserve accounts funded with a surety bond.

*Rulemaking Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.502(5), 718.503, 718.618 FS. History—New 7-2-81, Formerly 7D-24.07, 7D-24.007, Amended 1-26-97.*

## **CHAPTER 61B-25 VOLUNTEER AND PAID MEDIATION RULES**

- 61B-25.001 Mediation Definitions
- 61B-25.002 Volunteer and Paid Mediator Lists
- 61B-25.003 Procedure for Applying; Volunteer Mediators
- 61B-25.004 Procedure for Applying; Paid Mediators

### **61B-25.001 Mediation Definitions.**

For purposes of Sections 718.501(1)(l) and 719.501(1)(n), F.S., the following definitions shall apply:

(1) “Mediation” means a process whereby a neutral third person acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, for example, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(2) The phrase “mediated a dispute” means that the person as neutral third party assisted parties to a dispute with the goal of reaching a mutually acceptable and voluntary agreement through mediation as described in subsection (1) of this rule. The following shall not be

considered as having “mediated a dispute”:

(a) Having served as counsel or adviser to a party to a mediation;

(b) Having been a party to a mediation; or

(c) Having participated in mediation as part of training or mentoring.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History—New 3-18-93, Formerly 7D-25.001, Amended 12-2-97, 2-25-07.*

### **61B-25.002 Volunteer and Paid Mediator Lists.**

(1) The division will maintain lists of both volunteer and paid mediators who have met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S., and these rules. The lists will include the name, address, and telephone number of each applicant who has met the statutory and rule requirements for appearing on the lists. Names shall be removed from the lists as provided in this rule.

(2) The division will update the list of volunteer mediators on July 1 of each year by sending a letter to each individual on the list, requesting that the individual advise the division within 30 days if the individual wishes to remain on the list. The division will remove the name of any individual who fails to notify the division in writing within 30 days from the date of the notice that the individual wishes to remain on the list. The removed name will be added to the list again upon written request of the person whose name was removed.

(3)(a) The division will remove from the list of volunteer mediators the name of any person who accepts any compensation or reimbursement for the mediation of a condominium dispute when the mediator was selected from the list or who submits false information in the application or documentation required by Rule 61B-25.003, Florida Administrative Code.

(b) The division will remove from the list of paid mediators the name of any person who submits false information in the application or documentation required by Rule 61B-25.003, Florida Administrative Code.

(4) The division does not endorse or in any way approve any volunteer or paid mediator appearing on the lists.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History—New 3-18-93, Formerly 7D-25.002, Amended 12-2-97, 2-25-07.*

**61B-25.003 Procedure for Applying; Volunteer Mediators.**

(1) A person who has met the requirements of Sections 718.501(1)(1) and 719.501(1)(n), F.S., and these rules, and who wishes to be placed on a list of volunteer mediators maintained by the division, shall submit a completed BPR Form 33-035, APPLICATION FOR VOLUNTEER MEDIATOR, incorporated herein by reference and effective 3-18-93, and supporting documentation of training or experience to the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, FL 32399-1029. A copy of BPR form 33-035, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with BPR form 33-035, Application for Volunteer Mediator, shall consist of the following:

(a) Verification of the completion of 20 hours of training in mediation techniques. Verification shall consist of a certificate of completion from a training program or a notarized statement from an instructor or entity providing the training which verifies completion of 20 hours of training in mediation techniques or other verifiable evidence of completion of the training requirement; or

(b) Verification of having mediated 20 disputes. Verification shall consist of either of the following:

1. Documentation of having mediated at least 20 disputes in a mediation program such as a County Citizen Dispute Settlement Program; or,

2. An affidavit from the applicant attesting to having mediated at least 20 disputes. If an affidavit is provided, it shall be supplemented with notarized statements attesting to the mediations from all parties of at least five disputes mediated by the applicant.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of volunteer mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant's name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(1), 719.501(1)(n) FS. History—New 3-18-93, Formerly 7D-25.003, Amended 12-2-97, 2-25-07.*

**61B-25.004 Procedure for Applying; Paid Mediators.**

(1) A person who has met the requirements of Sections 718.501(1)(1) and 719.501(1)(n), F.S., and these rules, and is certified by the Florida Supreme Court to mediate court cases in either county or circuit courts, and who wishes to be placed on a list of paid mediators maintained by the division, shall submit a completed DBPR Form CO 6000-33-042, APPLICATION FOR PAID MEDIATOR, incorporated herein by reference and effective 12-2-97, and supporting documentation to the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, FL 32399-1029. A copy of DBPR Form CO 6000-33-042, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with DBPR Form CO 6000-33-042, is an acknowledgment from the Florida Supreme Court that the applicant is currently certified by the Florida Supreme Court to mediate cases in either circuit or county courts.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of paid mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant's name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met. If a person certified as a paid mediator by the division is no longer certified by the Florida Supreme Court to mediate court cases in either circuit or county courts, the person shall immediately so notify the division and the person's name shall be automatically deleted from the list of paid mediators.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(1), 719.501(1)(n) FS. History—New 12-2-97, Amended 2-25-07.*

**CHAPTER 61B-45  
THE MANDATORY NON-BINDING ARBITRATION  
RULES OF PROCEDURE**

- 61B-45.001 Scope, Organization, Forms, Purpose, and Title
- 61B-45.004 Who May Appear; Criteria for Other Qualified Representatives; Standards of Conduct
- 61B-45.007 Communication with Arbitrator

61B-45.009	Computation of Time; Service by Mail
61B-45.010	Filing; Service of Papers; Signing
61B-45.011	Motions; Temporary or Interim Injunctive or Emergency Relief
61B-45.013	Matters Eligible or Ineligible for Arbitration
61B-45.015	Parties; Appearances; Substitution and Withdrawal of Counsel
61B-45.016	Expedited Procedure for Determination of Jurisdiction
61B-45.017	Initiation of Arbitration Proceedings; Content of Petition
61B-45.018	Processing of Arbitration Petitions; Notification to Parties
61B-45.019	Answer and Defenses
61B-45.020	Defaults and Final Orders on Default
61B-45.024	Discovery
61B-45.025	Subpoenas and Witnesses; Fees
61B-45.030	Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact
61B-45.033	Notice of Final Hearing; Scheduling; Venue; Continuances
61B-45.035	Withdrawal or Voluntary Dismissal of Petition; Settlement
61B-45.036	Conduct of Proceedings by Arbitrator
61B-45.0365	Non-Final Orders
61B-45.037	Stenographic Record and Transcript
61B-45.039	Conduct of Formal Hearing; Evidence
61B-45.043	Final Orders; Appeals; Stays
61B-45.044	Motions for Rehearing
61B-45.048	Claim for Costs and Attorney's Fees

**61B-45.001 Scope, Organization, Forms, Purpose, and Title.**

(1) This chapter shall be entitled “The Mandatory Non-Binding Arbitration Rules of Procedure” and shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings for mandatory non-binding arbitration held pursuant to Section 718.1255, F.S. (1991) and Section 719.1255, F.S. (1992 Supp.). This chapter does not apply to recall arbitrations commenced pursuant to Section 718.112(2)(k) or 719.106(1)(f), F.S. (1992 Supp.); recall arbitrations shall be governed by Chapter 61B-50, F.A.C.

(2) All petitions and other papers filed with the division shall be filed at the official headquarters of the Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029. A subject-matter index of

arbitration orders may be requested by writing to the Arbitration Clerk at this address.

(3) In order to file a petition for arbitration, a petitioner must use DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated herein by reference and effective 7-4-04. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR form ARB 6000-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective 7-4-04. An answer to a petition for arbitration must be filed using DBPR form ARB 6000-003, ANSWER TO PETITION, incorporated herein by reference and effective 2-17-98, and revised April 30, 1998. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 7-4-04. Copies of the forms referenced in these rules may be obtained by writing: Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Section, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029. All forms may be obtained online at <http://www.state.fl.us/dbpr/lsc/arbitration/index.shtml>.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.001, Amended 6-19-96, 12-10-96, 2-17-98, 7-4-04.*

**61B-45.004 Who May Appear; Criteria for Other Qualified Representatives; Standards of Conduct.**

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who does not need to be an attorney, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, F.S., and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, he or she shall file with the arbitrator a completed DBPR form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), F.A.C. Based on the information provided on the completed form, and based on the responses to any inquiries made by the arbitrator concerning the applicant's familiarity and understanding of

the statute and rules applicable to the proceeding, the arbitrator shall determine whether the prospective representative is authorized and qualified to appear in the arbitration proceedings and capable of representing the rights and interests of the person.

(3) Members of The Florida Bar and certified law students are bound by a broad code of ethics. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives appearing in any arbitration proceeding, except counsel subject to the disciplinary procedures of The Florida Bar.

(4) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading to ensure that the motion or pleading is filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good grounds and that it has not been presented solely for delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or suppress any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secrete himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.004, Amended 6-19-96.*

#### **61B-45.007 Communication with Arbitrator.**

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.007, Amended 6-19-96, 7-4-04.*

#### **61B-45.009 Computation of Time; Service by Mail.**

(1) In computing any period of time prescribed or allowed for the filing or service (i.e., mailing) of any document, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day. When the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal

holidays shall be excluded in the computation.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a document and that document is served by regular U.S. mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. No additional time is added for filing a motion for rehearing that must be filed (e.g., received by the agency) within 15 days of entry of a final order, or a motion for costs and attorney's fees that must be filed within 45 days of entry of the final order as required by Rule 61B-45.048, F.A.C., unless an appeal for trial de novo has been timely filed in the courts. Also, no additional time is added by operation of this rule for the filing of a complaint for trial de novo which must be filed in the courts within 30 days of the date of rendition of a final arbitration order as required by Section 718.1255(4)(k), F.S.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.009, Amended 6-19-96, 7-4-04.*

#### **61B-45.010 Filing; Service of Papers; Signing.**

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, except the initial petition, shall also be served on each party. A pleading or other paper is considered "filed" when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this \_\_\_\_ day of \_\_\_\_, 19\_\_."

\_\_\_\_\_

Signature

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the original petition for arbitration shall be accompanied by one (1) copy for each named respondent.

(4) "Filing" shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

- (a) The style of the proceeding involved;
- (b) The docket number, if any;
- (c) The name of the party on whose behalf the pleading is filed;
- (d) The name, address, and telephone number of the person filing the pleading or motion;
- (e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.010, Amended 9-21-94, 12-20-95, 6-19-96, 7-4-04.*

**61B-45.011 Motions; Temporary or Interim Injunctive or Emergency Relief.**

(1) An application to the arbitrator for an order shall be made by motion which shall be made in writing, unless made during a hearing, shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 days of service of a written motion, file a written response in opposition to the motion.

(2) A party may, either with the original petition for arbitration, or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Formerly 7D-45.011, Amended 6-19-96, 12-10-96, 7-4-04.*

**61B-45.013 Matters Eligible or Ineligible for Arbitration.**

(1) A “dispute” under Section 718.1255, F.S., includes a disagreement that involves use of a unit or the appurtenances thereto, including use of the common elements.

(2) No controversy shall be accepted for arbitration under these rules where the controversy is between or among unit owners, or between or among a unit owner or unit owners and tenants, except where the association is a party and the dispute is otherwise eligible for arbitration. The only disputes eligible for arbitration are those existing between a unit owner or owners and the association or its board of administration; however, pursuant to Rule 61B-

45.015, F.A.C., a tenant shall be named as a party respondent where the subject matter of the dispute concerns a tenant. In addition, other unit owners having a particular interest in the proceeding shall be named as parties.

(3) Except as otherwise provided by Rule 61B-45.035, F.A.C., any party who has participated as a party in a prior arbitration, administrative or court hearing shall not be allowed, consistent with the principles of res judicata and collateral estoppel, to raise identical issues in a subsequent arbitration hearing.

(4) Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated.

(5) No petition shall be accepted for arbitration under these rules which involves issues which are moot, abstract, hypothetical, or otherwise lacking the requirements of a case or controversy; no dispute which is not a bona fide, actual and present dispute shall be accepted for arbitration.

(6) No petition shall be accepted for arbitration under these rules which alleges the failure by the association to enforce, or properly enforce, the condominium documents, unless the controversy otherwise constitutes a dispute as defined by Section 718.1255, F.S., and these rules.

(7) No petition shall be accepted for arbitration under these rules which alleges the failure of the association to properly repair, replace, or maintain the common elements, common areas, association property, or cooperative property unless the petition also alleges how the petitioner’s use of the common elements, common areas, association property, or cooperative property has been directly affected as a result of the alleged failure.

(8) No petition shall be accepted for arbitration under these rules unless it arises in a residential cooperative or condominium, and involves a residential unit or units; however, a petition will be accepted which arises in a nonresidential condominium, if the declaration provides for arbitration pursuant to Section 718.1255, F.S.

*Rulemaking Authority 718.1255(4), 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.013, Amended 9-21-94, 6-19-96, 2-22-15.*

**61B-45.015 Parties; Appearances; Substitution and Withdrawal of Counsel.**

(1) Parties in proceedings before the arbitrator are unit owners, associations, and tenants to the extent provided in

subsection 61B-45.013(5), F.A.C. If the dispute involves a tenant, the tenant and the unit owner shall be named as party respondents. If the petition may directly affect the particular interests of a non-party unit owner, the unit owner shall be made a party to the proceeding. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding. The party who files a petition shall be designated as the petitioner. The party who files an answer shall be designated as the respondent.

(2) **Withdrawal of Counsel or Representative.** An attorney or qualified representative who has filed a petition or has otherwise become an attorney or representative of record for any party to a proceeding under these rules shall remain attorney or representative of record in said cause and shall be permitted to withdraw from the cause only upon filing a notice with the arbitrator, which notice shall provide a correct mailing address for the client.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.015, Amended 9-21-94, 6-19-96.*

#### **61B-45.016 Expedited Procedure for Determination of Jurisdiction.**

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a request for expedited determination of jurisdiction by filing a completed DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated in subsection 61B-45.001(3), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by a completed DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.002(3), F.A.C., which shall include the \$50 filing fee provided by Section 718.1255, F.S.

(2) If the determination of jurisdiction is subject to reasonable dispute, within 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by U.S. mail to all other persons involved with the dispute, a copy of the request for relief, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

(3) The arbitrator, within 20 days of receipt of the responses permitted by subsection (2) above, shall make a determination of whether the controversy falls within the jurisdiction of the division, and shall enter an appropriate order.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.016, Amended 9-21-94, 6-19-96, 7-4-04.*

#### **61B-45.017 Initiation of Arbitration Proceedings; Content of Petition.**

(1) Initiation of arbitration proceedings shall be made by a unit owner or association filing the original petition for arbitration and one copy for each named respondent with the Division of Florida Condominiums, Timeshares, and Mobile Homes. All petitions shall be submitted on a completed DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.001(3), F.A.C. A fee of \$50.00 shall be included with each petition for arbitration. A petition which is not accompanied by this fee shall not be processed. Once a petition, including the filing fee, is received by the division for filing, the fee cannot be refunded.

(2) If a person other than an attorney files a petition or other pleading as a representative of a party, that person shall simultaneously file a completed DBPR Form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), F.A.C.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.017, Amended 9-21-94, 12-20-95, 6-19-96, 2-17-98.*

#### **61B-45.018 Processing of Arbitration Petitions; Notification to Parties.**

(1) If, upon receipt of a petition for arbitration, the filing fee required by Section 718.1255, F.S., is not included, the division shall return the petition to the sender with an explanation for its return.

(2) After assignment of a petition for arbitration, the arbitrator shall make a preliminary determination on whether the controversy described in the petition falls within the jurisdiction of the division and whether the petition complies with Rule 61B-45.017, F.A.C.

(3) If the controversy falls within the jurisdiction of the division, and complies with Rule 61B-45.017, F.A.C., the arbitrator shall so notify the petitioner and shall proceed as set forth in subsection (4) below. The arbitrator shall reject a petition if it is determined to be outside the jurisdiction of the division.

(4) If the petition fails to comply with Rule 61B-45.017, F.A.C., the arbitrator shall enter an order requiring petitioner to amend the petition to comply with Rule 61B-

45.017, F.A.C. The arbitrator shall reject a petition for noncompliance with Rule 61B-45.017, F.A.C.

(5) If the arbitrator preliminarily determines the dispute to fall within the jurisdiction of the division and determines that the petition complies with Rule 61B-45.017, F.A.C., the arbitrator shall by United States certified mail or personal service, provide the respondent with a copy of the petition and an order requiring respondent to file an answer.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.018, Amended 9-21-94, 6-19-96, 2-17-98.*

### **61B-45.019 Answer and Defenses.**

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a respondent shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. The answer shall include all defenses and objections, and shall be filed on DBPR form ARB96-003, ANSWER TO PETITION, incorporated in subsection 61B-45.001(3), F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in Rule 61B-45.017, F.A.C.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition postpones the time for filing of the answer until 20 days after the arbitrator's ruling on the motion. The following defenses shall be made by motion in opposition to the petition:

- (a) Lack of jurisdiction over the subject matter,
- (b) Lack of jurisdiction over the person,
- (c) Insufficiency of process,
- (d) Insufficiency of service of process,
- (e) Failure to state a cause of action, and
- (f) Failure to join indispensable parties.

A motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion

shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based. The defense of selective enforcement shall contain all examples of selective enforcement upon which the respondent depends, shall indicate the unit(s) to which each example pertains, shall identify the unit owner(s), how long the violation has existed, and shall indicate whether the board knew of the existence of the violation(s). The defense that the petitioner has failed to provide the pre-arbitration notice required by Section 718.1255, F.S., is deemed waived if not asserted by motion to dismiss set forth in subsection (2) above or in the answer.

(4) An answer shall separately identify all facts contained in the petition which the respondent disputes, or shall in the alternative state that no disputed facts exist. All facts not specifically denied shall be deemed admitted. A general denial does not satisfy the requirements of this paragraph. Any answer which fails to comply with this requirement shall be stricken.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.019, Amended 9-21-94, 6-19-96, 7-4-04.*

### **61B-45.020 Defaults and Final Orders on Default.**

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) Final Order. Final orders after default may be entered by the arbitrator at any time. The arbitrator shall receive affidavits as necessary to determine damages.

(3) Setting Aside Default. If a final order after default has been entered, the arbitrator may set it aside for reasons of excusable neglect, mistake, surprise, or inadvertence. A motion setting aside the final order after default must be

made within a reasonable time not to exceed 1 year after the final order was entered.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.020, Amended 6-19-96, 12-10-96, 7-4-04.*

#### **61B-45.024 Discovery.**

(1) It is intended that the discovery process shall be used sparingly and only for the discovery of those things which are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as may be modified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner's right of access to the official records as provided by Section 718.111(12), F.S., in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.024, Amended 9-21-94, 6-19-96, 7-4-04.*

#### **61B-45.025 Subpoenas and Witnesses; Fees.**

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410., Florida Rules of Civil Procedure, (1996), or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, F.S., (1996), or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be

processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.025, Amended 6-19-96.*

#### **61B-45.030 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.**

(1) Any dispute which does not involve a disputed issue of material fact as shown by the answer, prehearing stipulation, or otherwise, shall be arbitrated as provided in this rule.

(2) At any time after the filing of the petition and answer, if any, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief pursuant to the petition if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds that no meritorious defense exists, and that the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-45.039, F.A.C., shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute solely upon the pleadings and evidence filed by the parties.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.030, Amended 6-19-96.*

#### **61B-45.033 Notice of Final Hearing; Scheduling; Venue; Continuances.**

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) Whenever possible, hearings shall be held by telephone conference call or at the place most convenient to all parties and witnesses as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing may be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History–New 4-1-92, Amended 2-2-93, Formerly 7D-45.033, Amended 6-19-96, 7-4-04.*

**61B-45.035 Withdrawal or Voluntary Dismissal of Petition; Settlement.**

(1) A petitioner may withdraw or voluntarily dismiss the petition for arbitration at any time. Such withdrawal or dismissal shall be in writing directed to the arbitrator and shall be without prejudice to refile. No withdrawal or voluntary dismissal of a petition shall operate as an automatic withdrawal or dismissal of any other claim or petition pending in that case.

(2) Withdrawal or voluntary dismissal of the petition for arbitration shall not constitute exhaustion of administrative remedies or otherwise relieve the petitioner of the requirement of arbitration prior to resort to the courts as provided by Section 718.1255(4)(a) or 719.1255, F.S.

(3) The petitioner may request that the arbitration be dismissed based on a settlement of the dispute. Except as otherwise provided by subsection 61B-45.048(8), F.A.C., or by the terms of a settlement agreement, the settlement of a dispute shall not preclude the filing of a petition for costs and attorney’s fees pursuant to Rule 61B-45.048, F.A.C.

(4) Where a party undertakes corrective action in the case which ends the dispute between the parties, such as removing an unapproved pet or tenant, that party shall immediately notify the arbitrator of the action taken.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History–New 4-1-92, Amended 2-2-93, Formerly 7D-45.035, Amended 9-21-94, 6-19-96, 7-4-04.*

**61B-45.036 Conduct of Proceedings by Arbitrator.**

(1) The failure or refusal of a petitioner to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition or individual claims or imposition of costs and attorney’s fees, or both, as appropriate, where such failure is deemed willful, intentional, or a result of neglect. The dismissal of any petition pursuant to this rule shall not be considered a decision on the merits of the petition.

(2) The failure or refusal of a respondent to comply with any lawful order of the arbitrator or with a provision of these rules shall result in the striking of the answer or individual defenses or imposition of costs and attorney’s fees, or both, as appropriate.

(3) The arbitrator may without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing, by telephone conference.

(4) At any time after a petition has been filed, with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History–New 4-1-92, Formerly 7D-45.036, Amended 6-19-96, 2-17-98.*

**61B-45.0365 Non-Final Orders.**

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is placed in abeyance or abated by a non-final order, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

*Rulemaking Authority 718.1255(4), 718.1255(4)(i) FS. Law Implemented 718.1255(3)(c), 718.1255(4)(i) FS. History–New 9-22-14.*

**61B-45.037 Stenographic Record and Transcript.**

(1) Any party wishing a stenographic record shall make such arrangements directly with the court reporter and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party’s own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History–New 4-1-92, Amended 2-2-93, Formerly 7D-45.037.*

**61B-45.039 Conduct of Formal Hearing; Evidence.**

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross-examine the other party’s witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or

affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses, then the respondent shall present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding, and the formal rules of evidence applicable to court proceedings do not generally apply. Any relevant evidence shall be admitted if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proved through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath) may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding, unless the hearsay evidence would be admissible over objection in a civil action. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits and shall be so marked in the order received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.039, Amended 9-21-94, 6-19-96.*

#### **61B-45.043 Final Orders; Appeals; Stays.**

(1) Unless waived, a final order shall be entered within 45 days after the hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of any award or remedy. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show

the date of mailing of the final order to the parties. The date of mailing of the final order shall be the date used to calculate the deadline for appeal by trial de novo.

(3) The final order shall include notice of the right to initiate judicial proceedings under Section 718.1255 or 719.1255, F.S.

(4) The decision shall be final and binding upon the parties, unless judicial proceedings are initiated pursuant to Section 718.1255 or 719.1255, F.S.

(5) The arbitrator in the final order may grant mandatory or prohibitory relief, monetary damages, declaratory relief, or any other remedy or relief which is deemed just and equitable. However, no final order may include the imposition of a civil penalty pursuant to Section 718.501 or 719.501, F.S.

(6) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(7) A final order of the arbitrator does not constitute final agency action and therefore is not appealable to the district courts of appeal as otherwise provided by Section 120.68, F.S., and Rule 9.110, Florida Rules of Appellate Procedure. Appeals, if taken, shall be by trial de novo as described in subsection (4) above.

(8) The arbitrator, the division, and the Department of Business and Professional Regulation are not necessary parties in judicial proceedings relating to the arbitration, including appeals by trial de novo and actions seeking enforcement of final orders.

(9) A final or nonfinal order is effective upon its issuance unless a stay has been issued. A party who appeals from an order seeking to stay a final or nonfinal order may, within 30 days of issuance of a final or nonfinal order from which an appeal is sought, file a motion to stay with the arbitrator who shall have continuing jurisdiction to grant, modify, or deny such request for relief.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.043, Amended 9-21-94, 12-20-95, 6-19-96, 12-10-96, 7-4-04.*

#### **61B-45.044 Motions for Rehearing.**

(1) A motion for rehearing may be filed within 15 days after the date of entry of the final order. The motion shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended and shall not reargue the merits of the final order. Any response to the

motion must be filed within 10 days of service of the motion.

(2) The arbitrator shall not modify the substance of the final order except upon a showing that the decision is based on a clear error of law or fact. A motion that is timely filed pursuant to this rule shall suspend the operation of the final order, and the time for filing a complaint for trial de novo, a motion seeking to recover prevailing party costs and attorney's fees, or a petition for enforcement under Sections 718.1255 and 719.1255, F.S., shall not commence until the arbitrator either denies the motion or enters an amended final order. An untimely filed motion for rehearing does not toll or otherwise stop the time provided for the filing of a motion for prevailing party costs and attorney's fees or the time provided for the filing of a petition for trial de novo in the courts.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.044, Amended 9-21-94, 6-19-96, 7-4-04.*

#### **61B-45.048 Claim for Costs and Attorney's Fees.**

(1) Any party seeking an award of costs and attorney's fees must request the award in writing prior to the rendition of the final order.

(2) A prevailing party seeking an award of costs and attorney's fees shall file a motion seeking the award not later than 45 days after rendition of the final order, except that if an appeal by trial de novo has been timely filed in the courts, a motion seeking prevailing party costs and attorney's fees must be filed within 45 days following the conclusion of that appeal and any subsequent appeal. The motion is considered "filed" when it is received by the division. The motion shall:

(a) State the basis for the petition and the total attorney's fees and costs that are claimed;

(b) Specify the hourly rate claimed;

(c) Include an affidavit by the attorney who performed the work that:

1. States the number of years in which the attorney has been practicing law,

2. Indicates each activity for which compensation is sought, and

3. States the time spent on each activity.

In a case involving multiple issues which are separate and distinct from each other, the affidavit shall identify the specific issue for which each activity was performed.

(d) If an award of costs is sought, attach receipts or other documents that provide evidence of the costs claimed. The arbitrators shall follow Florida case law and

the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in awarding costs. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript, or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

(3) The failure of a party to timely file a motion complying with this rule or to timely plead for or request attorney's fees shall preclude the party from recovering its costs and attorney's fees incurred in the arbitration.

(4) The parties on whom a motion for costs and attorney's fees is served shall have 20 days from receipt of the motion in which to file a response to the motion with the arbitrator.

(5) A final order on the motion for attorney's fees or costs shall be entered in the manner and within the time prescribed by Rule 61B-45.043, F.A.C. In determining a reasonable hourly fee and a reasonable total award of costs and attorney's fees, the arbitrator is not required to conduct any hearing or proceedings or to seek or consider expert advice or testimony.

(6) Any proceeding seeking costs and attorney's fees shall be stayed if a party to that proceeding has timely filed a complaint for trial de novo. The party filing the complaint for trial de novo shall notify the arbitrator that such complaint has been filed. The stay shall be in force and effect until the conclusion of that litigation and any subsequent appeal.

(7) The prevailing party in a proceeding brought pursuant to Section 718.1255, F.S., is entitled to an award of reasonable costs and attorney's fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition. Where a respondent has provided the relief sought by the petitioner prior to the filing of the petition and service on the respondent of the order requiring answer and copy of the petition, the petitioner under these circumstances is not deemed to be a prevailing party and is not entitled to an award of reasonable costs and attorney's fees. The factors to be considered by the arbitrator in determining a reasonable attorney's fees include the following:

(a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to

perform the legal service properly;

(b) The likelihood that the acceptance of the particular employment will preclude other employment by the attorney;

(c) The fee customarily charged in the locality for similar legal services;

(d) The amount involved and the results obtained;

(e) The time limitations imposed by the client or by the circumstances;

(f) The nature and length of the professional relationship with the client; and

(g) The experience, reputation, and ability of the attorney or attorneys performing the services.

*Rulemaking Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.048, Amended 9-21-94, 6-19-96, 2-17-98, 7-4-04.*

## **CHAPTER 61B-50 THE RULES OF PROCEDURE GOVERNING RECALL ARBITRATION**

61B-50.101	Scope, Organization, Procedure, and Title
61B-50.105	Initiation of Recall Arbitration
61B-50.106	Computation of Time
61B-50.107	Parties
61B-50.108	Who May Appear; Criteria for Other Qualified Representatives
61B-50.110	Communication with an Arbitrator
61B-50.112	Withdrawal of Petition
61B-50.115	Filing; Service of Papers; Signing
61B-50.117	Motions
61B-50.119	Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact
61B-50.124	Discovery
61B-50.126	Conduct of Proceeding by Arbitrator
61B-50.1265	Non-Final Orders
61B-50.127	Subpoenas and Witnesses; Fees
61B-50.130	Stenographic Record and Transcript
61B-50.131	Conduct of Formal Hearing; Evidence
61B-50.136	Notice of Final Hearing; Scheduling; Venue; Continuances
61B-50.139	Final Orders
61B-50.140	Technical Corrections; Rehearing
61B-50.1405	Motions for Attorney's Fees and Costs

### **61B-50.101 Scope, Organization, Procedure, and Title.**

(1) This chapter shall be entitled "The Rules of Procedure Governing Recall Arbitration" and shall govern

the arbitration of a recall of one or more members of a board of administration of a condominium or cooperative association. These rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings held pursuant to Section 718.112(2)(j) or 719.106(1)(f), F.S. The provisions of Chapter 682, F.S., and Chapter 61B-45, F.A.C., do not apply.

(2) All petitions and other papers filed with the division for recall arbitration pursuant to Sections 718.112(2)(j) and 719.106(1)(f), F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.01, Amended 7-27-88, Formerly 7D-50.001, Amended 1-17-93, Formerly 7D-50.101, Amended 1-19-97, 6-24-04.*

### **61B-50.105 Initiation of Recall Arbitration.**

(1) When one or more members of a board of administration of a condominium or cooperative association have been recalled, the board of administration may initiate a recall arbitration by filing a petition for recall arbitration with the division, as follows:

(a) Recall at a Unit Owner Meeting. Where the unit owners attempt to recall one or more members of a board at a unit owner meeting, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall.

(b) Recall by Written Agreement. Where the unit owners attempt to recall one or more members of a board by written agreement of a majority of the voting interests, and the board does not certify the written agreement to recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

(2) The time periods contained in Sections 718.112(2)(j) and 719.106(1)(f), F.S., operate, for purposes of these arbitration rules and not for enforcement purposes under Section 718.501, F.S., in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely

comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board's claims of excusable neglect or the inability to identify defects in the recall effort within the time provided, or other unremarkable excuses will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718 and 719, F.S., will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rule 61B-23.0028, Florida Administrative Code.

(3) Only the board of an association may file a petition for recall arbitration. Where the board fails to file a petition for recall arbitration as required by these rules and Chapters 718 and 719, Florida Statutes, the unit owners seeking to challenge the board's decision not to file for recall arbitration may file a petition for arbitration pursuant to Section 718.1255(1)(b) or 719.1255, F.S.

(4) Form of Petition. The term "petition" as used in this rule includes any application or other document that expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

(5) All petitions for arbitration of a recall shall be signed by either a duly authorized board member, a member of the Florida Bar, or a qualified representative who has been retained by the board. Each petition shall contain:

(a) The name and address of the association and the number of voting interests;

(b) The name or names of the board member or members who were recalled;

(c) The name and address of the unit owner representative selected, pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), F.A.C., or subparagraph 61B-75.007(3)(b)2. or paragraph 61B-75.008(1)(f), F.A.C., to receive pleadings, notices, or other papers on behalf of the recalling unit owners;

(d) A statement of whether the recall was by vote at a

meeting of the membership or by written agreement;

(e) If the recall was by vote at a meeting, the petition shall state the date of the meeting of the membership and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

(f) The date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order and adjourned;

(g) A copy of the minutes of the board meeting at which the board determined not to certify the recall;

(h) Each specific basis upon which the board based its determination not to certify the recall, including the unit number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

(i) Any relevant sections of the bylaws, articles of incorporation, the declaration of condominium, cooperative documents, and rules, including all amendments thereto, as well as any or other documents which are pertinent to the petition; and

(j) Any other information which the petitioner contends is material.

(6) If, during the pendency of a recall arbitration, the unit owners in the condominium or cooperative attempt another recall effort and the board files another petition for arbitration, the newly filed petition shall be consolidated with the pending case.

(7) Upon receipt and review of a petition for arbitration of a recall of one or more board members, the division shall either accept or deny the petition. If the petition is accepted, within 10 days the arbitrator shall serve the respondent unit owners by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling unit owners identified in the petition.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f) FS. History—New 1-17-93, Formerly 7D-50.105, Amended 11-15-95, 6-24-04.*

### **61B-50.106 Computation of Time.**

(1) In computing the five full business days prescribed by Sections 718.112(2)(j) and 719.106(1)(f), F.S., and these rules, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a paper upon that party and the paper is served by regular United States mail, five days shall be added to the prescribed period. This provision does not apply to the filing of the petition for recall arbitration. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.02, 7D-50.002, Amended 1-17-93, Formerly 7D-50.106, Amended 11-15-95, 6-24-04.*

### **61B-50.107 Parties.**

(1) Parties in any proceeding conducted in accordance with Section 718.112(2)(j) or 719.106(1)(f), F.S., are petitioners or respondents.

(2) The petitioner shall be the board of administration of an association that files a petition for binding arbitration of a recall of one or more members of the board.

(3) The respondent shall be the group of members of an association who voted at a meeting, or who executed a written agreement, to recall one or more members of the board.

(4) All parties shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-50.115, F.A.C.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.03, Amended 7-27-88, Formerly 7D-50.003, Amended 1-17-93, Formerly 7D-50.107, Amended 6-24-04.*

### **61B-50.108 Who May Appear; Criteria for Other Qualified Representatives.**

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied,

represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, F.S., and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative's sworn affidavit setting forth the representative's qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the unit owner's interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration.

(4) The arbitrator shall make a determination of the qualifications of the prospective non-attorney representative in light of the nature, scope and extent of the proceedings, the proposed representation, the applicable federal and state laws, rules and regulations, and the factual and legal issues to be presented during the arbitration proceeding. (The prospective non-attorney representative shall not, however, be required to disclose facts and legal theories to the prejudice of his client.) In determining the qualifications of a prospective non-attorney representative, the arbitrator shall consider the following criteria to the extent they are relevant, material, and applicable to the proceeding:

(a) The prospective representative's knowledge of jurisdiction and supportive legal authority to file the initial petition;

(b) The knowledge or experience of the prospective representative regarding Chapter 61B-50, F.A.C., The Rules of Procedure Governing Recall Arbitration, Section 718.112(2)(k) or 719.106(1)(f), F.S., and the scope and remedies of the arbitration process;

(c) The knowledge or experience of the prospective representative regarding the application and interpretation of the Florida Rules of Civil Procedure as they relate to

discovery in an arbitration proceeding;

(d) The knowledge or experience of the prospective representative regarding the rules of evidence, including the concept of hearsay and its use in an arbitration proceeding;

(e) The knowledge or experience of the prospective representative regarding the statutes of rules which may be at issue;

(f) The educational background, training or work experience of the prospective representative relevant to the subject matter involved in the proceeding;

(g) The relationship of the prospective representative to the person, and the need of the person to have a representative speak on the person's behalf; and

(h) Any other matters which are deemed relevant and material by the arbitrator.

(5) A representative named in the initial petition or who has filed a notice of appearance shall remain the representative of record and shall receive pleadings and continue in a representative capacity until the representative's withdrawal has been approved in writing by the arbitrator.

(6) Any successor or associated attorney or other non-attorney representative shall file a notice of appearance prior to, or at the time of, the filing of any pleading with, or appearance before, the arbitrator.

(7) Members of the Florida Bar and certified law students are bound by the Rules of Professional Conduct of the Rules Regulating the Florida Bar. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives, including unit owner representatives chosen pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), F.A.C., appearing in any arbitration proceeding, except counsel subject to disciplinary procedures of the Florida Bar.

(8) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading. All motions or pleadings shall be filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secret himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.04, Amended 7-27-88, Formerly 7D-50.004, Amended 1-17-93, Formerly 7D-50.108, Amended 2-13-97, 6-24-04.*

#### **61B-50.110 Communication with an Arbitrator.**

(1) While a case is pending, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation

concerning the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 1-17-93, Formerly 7D-50.110, Amended 1-19-97, 6-24-04.*

#### **61B-50.112 Withdrawal of Petition.**

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing, or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 718.1255, 719.1255 FS. History— New 1-17-93, Formerly 7D-50.112, Amended 11-15-95, 6-24-04.*

#### **61B-50.115 Filing; Service of Papers; Signing.**

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, including the initial petition, shall also be served on each party. A pleading or other paper is considered “filed” when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the

attorney, representative, or party at that person's last known address.

(b) When the unit owners have not designated a unit owner representative to represent their interest in a recall proceeding or when the unit owner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration and the order allowing answer on the condominium property in a conspicuous location as a means of notifying the unit owners of the recall arbitration.

(c) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

“I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this \_\_\_ day of \_\_\_, 20\_\_ .

\_\_\_\_\_  
Signature”

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall arbitration shall be accompanied by one (1) copy for the respondents.

(4) “Filing” shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. Except for the initial petition for recall arbitration, a facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the

following:

- (a) The style of the proceeding involved;
- (b) The case number, if any;
- (c) The name of the party on whose behalf the pleading or motion is filed;
- (d) The name, address, and telephone number of the person filing the pleading or motion;
- (e) The signature of the person filing the pleading or motion; and
- (f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.09, 7D-50.009, Amended 1-17-93, Formerly 7D-50.115, Amended 1-19-97, 6-24-04.*

#### **61B-50.117 Motions.**

An application to the arbitrator for an order shall be made by written motion, unless made during a hearing. The motion shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 business days of service of a written motion, file a written response in opposition to the motion.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 7-1-82, Formerly 7D-50.12, 7D-50.012, Amended 1-17-93, Formerly 7D-50.117, Amended 1-19-97, 6-24-04.*

#### **61B-50.119 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.**

(1) Any dispute which does not involve a disputed issue of material fact shall be arbitrated as hereinafter provided.

(2) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the

requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-50.131, F.A.C., shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(5) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.119, Amended 2-13-97, 6-24-04.*

#### **61B-50.124 Discovery.**

(1) The discovery process shall be used sparingly and only for the discovery of those things that are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as otherwise specified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner's right of access to the official records as provided by Sections 718.111(12) and 719.104(2), F.S., in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties to submit supplemental information, evidence or affidavits in support of or refuting the reason(s) listed in the petition as grounds for failing to certify the recall.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.15, 7D-50.015,*

*Amended 1-17-93, Formerly 7D-50.124, Amended 1-19-97, 6-24-04.*

**61B-50.126 Conduct of Proceeding by Arbitrator.**

(1) The failure or refusal of a respondent to comply with a provision of these rules or any lawful order of the arbitrator shall result in the striking of the answer including any defenses or pending claims where such failure is deemed willful, intentional, or a result of neglect.

(2) The failure or refusal of an association to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect.

(3) In order to expedite the case, the arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing or final hearing, by telephone or video conference.

(4) At any time after a petition has been filed with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(k), (l), 718.1255, 719.106(1)(f) FS. History–New 1-17-93, Formerly 7D-50.126, Amended 1-19-97.*

**61B-50.1265 Non-Final Orders.**

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is placed in abeyance or abated by a non-final order, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

*Rulemaking Authority 718.1255(4) FS. Law Implemented 718.1255(3)(c), 718.1255(4) FS. History–New 9-22-14.*

**61B-50.127 Subpoenas and Witnesses; Fees.**

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure, or as that rule may subsequently be renumbered. Proof of

such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, F.S., or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History–New 7-1-82, Formerly 7D-50.19, 7D-50.019, Amended 1-17-93, Formerly 7D-50.127, Amended 1-19-97, 6-24-04.*

**61B-50.130 Stenographic Record and Transcript.**

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all the costs of obtaining such a record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party's own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History–New 1-17-93, Formerly 7D-50.130, Amended 1-19-97, 6-24-04.*

### **61B-50.131 Conduct of Formal Hearing; Evidence.**

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross examine the other party's witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, the respondent may present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any relevant evidence if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but is not sufficient to support a finding, unless the hearsay evidence would be admissible in a court of law. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits. The exhibits shall be marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.22, 7D-50.022, Amended 1-17-93, Formerly 7D-50.131, Amended 1-19-97, 6-24-04.*

### **61B-50.136 Notice of Final Hearing; Scheduling; Venue; Continuances.**

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing shall be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.24, 7D-50.024, Amended 1-17-93, Formerly 7D-50.136, Amended 1-19-97, 6-24-04.*

### **61B-50.139 Final Orders.**

(1) Unless waived, a final order shall be entered within 30 days after any final hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show the date of mailing of the final order to the parties.

(3) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(4) A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.25, 7D-50.025, Amended 1-17-93, Formerly 7D-50.139, Amended 1-19-97, 6-24-04.*

**61B-50.140 Technical Corrections; Rehearing.**

(1) Any party may file a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 10 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. The order may be corrected without affecting the merits of the decision upon the issues submitted. Such correction shall be achieved by the entry of a corrected order. The substance of the order itself may not be modified.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by

subsection (1) above within 60 days of the entry of the final order.

(3) No motion for rehearing of a final order certifying the recall shall be filed.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.140, Amended 1-19-97, 6-24-04.*

**61B-50.1405 Motions for Attorney's Fees and Costs.**

No party shall be entitled to recover its costs and attorney's fees in a recall proceeding initiated pursuant to Section 718.112(2)(j) or 719.106(1)(f), F.S.

*Rulemaking Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.125*