



# COMMUNITY ASSOCIATION MANUAL

Prepared by  
Collier County  
Community Development and Environmental Services Department  
2800 N. Horseshoe Drive  
Naples, FL 34104  
(239) 252-2400  
[www.colliergov.net](http://www.colliergov.net)

Spring 2007

# Table of Contents

PREFACE	
SECTION 1: HOMEOWNERS' ASSOCIATION	
HOMEOWNERS' ASSOCIATION OVERVIEW	<b>2</b>
GOVERNING DOCUMENTS	<b>3</b>
Declaration of Covenants	3
Articles of Incorporation	3
Bylaws	3
Rules and Regulations	3
AMENDING GOVERNING DOCUMENTS	<b>3</b>
REVIVING GOVERNING DOCUMENTS	<b>4</b>
PROHIBITED CLAUSES IN ASSOCIATION DOCUMENTS	<b>5</b>
BOARD OF DIRECTORS	<b>5</b>
Election and Filling Vacancies	5
OFFICERS OF THE ASSOCIATION	<b>6</b>
President	6
Vice-President	6
Secretary	6
Treasurer	7
MEETINGS	<b>7</b>
Notice Requirements	7
Board of Directors Meetings	8
Membership Meetings	8
Participation	8
Proxies	9
Committee Meetings	9
Quorum Requirements	9
Minutes	9
SUNSHINE LAWS	<b>10</b>
Notice of Meetings	11
Special Assessments	11
Participation at Meetings	11
Minutes	11
Committees	11
TRANSITION	<b>11</b>
What do your documents state?	13
FINANCIAL	<b>13</b>
Budget	13
Annual Financial Report	14

ASSESSMENTS	<b>14</b>
Enforcement Powers	14
Responsibility of the Developer	14
USE RIGHTS	<b>15</b>
OFFICIAL RECORDS	<b>15</b>
Photocopy Requests	15
Required Records to be Maintained	16
ASSOCIATION CONTRACTS	<b>17</b>
ELECTIONS	<b>17</b>
Proxies	18
Disputes	18
RECALL OF DIRECTORS	<b>18</b>
Recall by Written Agreement or Written Ballot	19
Recall By Vote Taken At a Called Meeting	19
Filling Board Vacancies Resulting From Recall	20
Failure of Board to Call Meeting	20
Failure to Establish Quorum Due to Board Vacancies	20
Resignation of Directors	21
REMEDIES FOR RULES VIOLATIONS	<b>21</b>
Fines and Suspensions	21
Fining Procedure	21
DISPUTE RESOLUTION	<b>22</b>
Mediation procedure	22
Mediation and Arbitration Filing Process	23
When Mediation is Required	23
When Arbitration is Required	23
When Arbitration is Voluntary	23
How to file for mediation or arbitration	24
SLAPP SUITS	<b>25</b>
SECTION 2: CONDOMINIUM ASSOCIATIONS	<b>26</b>
CONDOMINIUM ASSOCIATION OVERVIEW	<b>27</b>
DIRECTORS AND OFFICERS	<b>28</b>
Board of Directors	28
Officers	29
ASSOCIATION AUTHORITY AND RESPONSIBILITIES	<b>30</b>
Maintenance of the Common Elements	<b>30</b>
Insurance	31
Hurricane Shutters	31
RULES ENFORCEMENT	<b>32</b>

Fines and Penalties	33
Right of Access to Units	33
<b>RESTRICTIONS AND RESPONSIBILITIES OF UNIT OWNERS</b>	<b>33</b>
Restrictions	33
Financial Responsibilities of Unit Owners	34
<b>DOCUMENTS AND ASSOCIATION RULES</b>	<b>35</b>
Hierarchy of Governing Documents	35
Declaration of Condominium	36
Articles of Incorporation	36
Bylaws	37
Rules and Regulations	38
<b>AMENDING DOCUMENTS</b>	<b>38</b>
Vote Required to Amend the Declaration of Condominium	38
Vote Required to Amend Association Bylaws	39
Procedure for Amending Documents	39
<b>COMMON ELEMENTS</b>	<b>40</b>
Identifying Common Elements	41
Identifying Limited Common Elements	42
<b>USE RIGHTS AND FEES</b>	<b>43</b>
Flag Display	43
<b>CONDOMINIUM OMBUDSMAN</b>	<b>44</b>
<b>CONDOMINIUM ADVISORY COUNCIL</b>	<b>44</b>
<b>DEFINITION OF DEVELOPER</b>	<b>45</b>
<b>TURNOVER</b>	<b>46</b>
Developer Control	46
Non-Developer Representation	46
Non-Developer Control	47

When Does Turnover Occur?	<b>47</b>
Determining Percentages of Units Conveyed to Non-Developer Unit Owners	48
Voting Rights of a Unit Owner Who Purchases Units in a Bulk Transfer	48
Developer Rights and Responsibilities Concerning Turnover	<b>48</b>
Items Delivered To The Association By The Developer At Turnover	49
Turnover Audit Requirements	<b>51</b>
Agreements Entered Into By The Developer	<b>51</b>
One condominium/one association	51
More than one condominium/turnover not yet occurred	52
More than one condominium/turnover has occurred	52
More than one condominium/ more than one association	52
<b>COMMUNITY ASSOCIATION MANAGEMENT</b>	<b>52</b>
<b>DISASTER PLANNING</b>	<b>54</b>
Guidelines for Condominium Associations	<b>54</b>
The Planning Role of the Condominium Association	55
Plan Development	56
Hazard Analysis	57
Emergency Needs	57
Association Disaster Plan	<b>58</b>
Telephone Rosters	58
Action Guides/Checklists	59
Coordinating Plans	59
Preparing For the Disaster	<b>60</b>
Inventory of Association Documents	60
Protecting Association Documents	60
Video/Photographic Records	61
Communications Coordinator	61
Survey the Property	61
Contact Employees	61
Post-Disaster Recovery	<b>61</b>
Insurance	62
Obligations of the Association	62
<b>DOCUMENT PROVISIONS</b>	<b>65</b>
<b>RESERVES</b>	<b>66</b>
<b>MEETINGS</b>	<b>66</b>
Board of Directors Meetings	<b>68</b>
Definition	68
Notice Requirements	68
Electronic noticing	68
Broadcast Notice	70

Quorum/Voting Requirements	70
Setting the Agenda	71
Sunshine Laws	71
Committee Meetings	71
Unit Owner Meetings	71
Casting The Vote	72
Proxies	74
Participation At Meetings	76
Right to Record Meetings	76
Minutes of Meeting	76
<b>ELECTIONS</b>	<b>77</b>
Advance Notice	<b>78</b>
The First Notice of Election	78
The Second Notice of Election	78
Notices of Intent	<b>78</b>
Eligibility	79
Campaigning	79
Ballots and Envelopes	<b>79</b>
Conducting Your Election	<b>80</b>
Tie Breaker	81
Voting Machines	81
Assistance In Voting	81
Election Rights of Owners	<b>82</b>
Alternate Election Procedures	<b>82</b>
Proxies - General Information	<b>82</b>
General vs. Limited Proxy	82
Limited Proxy Form Instructions	83
Election Monitor Requests	<b>84</b>
Petition For Election Monitor	84
<b>RECALL</b>	<b>87</b>
General Recall Facts	<b>88</b>
Recall By Vote At Unit Owner Meeting	<b>88</b>
Recall Meeting	<b>89</b>
Electing Replacement Board Members When Recalled By Vote At Unit Owner Meeting	<b>90</b>
Recall of less than a majority	90
Recall of a majority or more	91
Board Action Concerning Recall	<b>91</b>

Recall By Written Agreement	<b>92</b>
Board Action Concerning Recall By Written Agreement	93
Electing Replacement Board Members When Recalled By Written Agreement	93
Non-Certification of the Recall	<b>94</b>
Recall Arbitration	<b>94</b>
<b>BUDGETS</b>	<b>96</b>
The Budget	<b>96</b>
Why Do Associations Have A Budget?	<b>96</b>
When to Begin the Budgeting Process	<b>97</b>
Fiscal Year	<b>97</b>
Meetings Held While Developing the Budget	<b>97</b>
Sections of the Budget	<b>98</b>
Operating	98
Reserves	99
The Budget Meeting	<b>100</b>
Accounting Records	<b>101</b>
Accounting Software	<b>101</b>
Good Accounting Practices	<b>101</b>
Providing Access to Accounting Records	<b>102</b>
Investing Association Funds	<b>102</b>
The Association’s Accounting Information System	<b>103</b>
<b>ASSESSMENTS (FUNDING THE BUDGET)</b>	<b>104</b>
Allocation of Common Expenses	<b>104</b>
Regular Assessments	105
Special Assessments	105
Liability For Assessments	<b>105</b>
<b>COMMINGLING OF FUNDS</b>	<b>105</b>
<b>FINANCIAL RECORDS MAINTENANCE</b>	<b>106</b>
Daily Accounting Records	<b>106</b>
Types of Records	107

Taxes	<b>108</b>
Form 1120H	108
Form 1120	108
<b>ASSOCIATION FEES</b>	<b>110</b>
<b>SECTION 3: COMMUNITY DEVELOPMENT DISTRICTS</b>	<b>111</b>
<b>COMMUNITY DEVELOPMENT DISTRICTS</b>	<b>112</b>
Introduction	112
What Is a Community Development District?	112
Limitations of CDD Powers	113
Establishment of a Community Development District	113
Powers and Operation	114
Fund Raising Mechanisms	114
Ad Valorem Taxes	114
Benefit and Maintenance Taxes	115
Special Assessment Taxes	115
Fees and Charges	115
Financing	115
Special Assessment Bonds	115
Revenue Bonds	116
Refunding Bonds	116
General Obligation Bonds	117
Bond Anticipation Notes	117
Special Assessment Tax Procedures	117
Summary of Non-ad Valorem Tax Collection Procedures	117
CDD Governance	118
Operations and Maintenance	118
Officers	119
Chairman of the Board	119
Vice Chairman of the Board	119
Secretary of the Board	119
Treasurer of the Board	119
Assistant Secretary	119
District Manager	119
District Engineer	120
District Attorney	120
Professional Support Staff	120
Financial Advisor	120



Underwriter	120
Bond Counsel	120
Underwriter's Counsel	121
Trustee, Bond Registrar, and Paying Agent	121
<b>SECTION 4: GUIDELINES AND RESOURCES FOR COMMUNITY ASSOCIATIONS IN COLLIER COUNTY</b>	<b>122</b>
<b>COLLIER COUNTY GOVERNMENT WEB SITE</b>	<b>123</b>
<b>BOARDS AND COMMITTEES</b>	<b>123</b>
Board of County Commissioners	123
Collier County Planning Commission	124
Coastal Advisory Committee	124
Conservation Collier Land Acquisition Advisory Committee (CCLAAC)	125
Environmental Advisory Council	125
Floodplain Management Planning	125
Development Services Advisory Committee	126
Post-Disaster Recovery Task Force	126
<b>OTHER COMMUNITY DEVELOPMENT DEPARTMENTS</b>	<b>126</b>
Building Review and Permitting	126
Department of Zoning and Land Development Review	127
Code Enforcement	127
Comprehensive Planning	128
Engineering Services	128
Environmental Services	128
Programs and Services	129
<b>TRANSPORTATION</b>	<b>130</b>
Development Review	130
Traffic Impact Statement	130
Annual Traffic PUD Monitoring Report	130
Traffic Calming	130
<b>SUNSHINE LAWS</b>	<b>131</b>

Application	<b>131</b>
Who else is covered?	131
Who is not covered?	131
What types of meetings are covered?	131
What types of meetings are not covered?	131
What forms of communication are covered?	132
What subjects are covered?	132
What are the requirements for voting?	132
Requirements	<b>133</b>
Meeting Locations	133
Public Attendance or Participation - Rights and Restrictions	133
What kind of notice must be given?	133
Must written minutes be kept of all public meetings?	133
Penalties	<b>133</b>
What are the penalties for violations of the Sunshine Law?	133
<b>WATER MANAGEMENT</b>	<b>134</b>
Responsibilities for associations and members	<b>134</b>
Landscape Maintenance Practices	135
<b>EMERGENCY PLANNING</b>	<b>135</b>
Hurricane	<b>135</b>
Wind	135
Tornados	<b>135</b>
Storm Surge	<b>135</b>
Heavy Rain	<b>136</b>
Insurance	<b>137</b>
Before the Storm	137
After the Storm	138
Flood	<b>138</b>
Warning	139
Warning	140
Contact Numbers	<b>141</b>
<b>SHERIFF'S OFFICE</b>	<b>142</b>
Locations	<b>142</b>
Main Location	142
Substations	142
Jurisdiction	<b>144</b>
Programs and Services	<b>144</b>

Crime Prevention	144
Fraud Protection	144
<b>ENVIRONMENTAL</b>	<b>146</b>
Sea Turtles	<b>146</b>
Lighting Compliance	146
Red Tide	<b>148</b>
Landscaping	<b>148</b>
Tree Selection and Planting	148
Waste Management	<b>148</b>
Hazardous Waste	148
Electronics Recycling	149
Disposal Facilities	<b>149</b>
<b>DEVELOPMENT</b>	<b>150</b>
Planned Unit Development (PUD)	<b>150</b>
Application Requirements	151
Prehearing Conference	151
Hearing before the Planning Commission	151
Action by the Board of County Commissioners	151
PUD Monitoring	<b>151</b>
Neighborhood Informational Meeting (NIM)	<b>152</b>
Rezoning, PUD Amendment, Conditional Use Requirements	152
Notice of Meeting	152
Location of Meeting	152
Advertisement of Meeting	152
Meeting Presentation	153
Record of Proceedings	153
Neighborhood Informational Meeting Requirements for Variance and Parking Exemption	153
Municipal Service Taxing Unit	<b>153</b>
<b>PERMITS AND PETITIONS</b>	<b>154</b>
Development of Regional Impact (DRI)	<b>154</b>
Building Permits	<b>155</b>
Landscape Tree Removal for Cultivated Landscapes	<b>155</b>
Criteria for removing trees	155
Application Procedures	155
Vegetation Removal Permit	<b>156</b>
Remodeling	<b>156</b>

Hiring Licensed Contractors	156
<b>COLLIER COUNTY ORDINANCES</b>	<b>157</b>
Street Name Change Request	157
Swimming Pools - Public	157
Collier County Irrigation Ordinance	158
Irrigation Schedule	159
Rental Registration Ordinance	160
<b>CONTACT INFORMATION</b>	<b>160</b>
Telephone Numbers	160
<b>WEB LINKS</b>	<b>161</b>
<b>FORMS AND SAMPLES</b>	<b>163</b>
Meetings	163
Notice of Members' Meeting	163
Board Meeting Notice to Board of Administration	164
Board Meeting Notice to Members	165
Notice - Establishing Posting Location	165
Waiver - Notice of Board Meeting	166
Affidavit - Proof of Notice	167
Proxies	168
General	168
Limited	169
Agenda - Board Meeting	170
Committees	171
Creating a Committee	171
Declaration of President	172
Committee Reports	173
Elections	174
First Notice	174
Second Notice of Election	174
Candidate Information Sheet	175
Voting Certificate	176
Election Ballot	177
Recall Petition	177
Transition	178
Notice of Transition Members' Meeting	178
Transition - Notice of Unit Owner Elections	179
Transition - Receipt of Documents (condominium)	181

Assessments	<b>183</b>
Amending Documents	<b>184</b>
Notice of Amendment to Condominium Documents	184
Certificate of Amendment	185
Articles of Amendment	186
Resolutions of Board of Administration	<b>187</b>
Hurricane Shutters	187
Speaking at Meetings	187
Recording and Videotaping Meetings	188
INDEX	<b>190</b>

## PREFACE

The Collier County Property Owners Association Manual provides general information and guidelines concerning the legal basis and authority, administrative structure, and management procedures and practices for mandatory membership property owners and condominium unit owners associations. Information is included about specific federal and state laws and County ordinances that affect the activities and services available to and through these *residential community* associations. While the manual may not address special needs or a situation particular to mandatory membership associations, it includes many references and links to material that provide more detailed information. This should encourage further research to help the association officers function effectively.

The purpose of common-interest community associations is to maintain the common areas and facilities of the development and to protect property and community values. The material resources available to achieve these objectives are the assessments paid by the unit and property owners, while the human resources are the volunteer efforts of the directors, committee members, and residents. It is the responsibility of the directors to use and manage these resources as effectively as possible to achieve the purpose of the association.

### **This manual is organized in four Sections.**

For the purposes of this manual, condominium and homeowner associations will be the focus since they constitute the overwhelming majority of common-interest property ownership in Collier County. The State of Florida currently has separate statutes that govern property owners' associations. The entire statutes can be accessed via the web at <http://www.leg.state.fl.us/statutes/> Please note that a bill is currently under consideration in the 2007 Legislative session to adopt a single unified statute governing condominiums and homeowner associations.

- **Section 1** addresses the requirements of homeowner associations. Mandatory homeowner associations (HOAs) are governed by the rules (laws) promulgated in Chapter 720, Florida Statutes.
- **Section 2** discusses the rules and regulations pertaining to condominium associations. The Division of Florida Land Sales, Condominiums and Mobile Homes (Division) has the authority to enforce Chapter 718, Florida Statutes (F.S.), known as the Condominium Act.
- **Section 3** discusses the emerging Community Development District (CDD) segment, an increasingly popular form of common interest community, particularly here in Collier County. Chapters 189 and 190 of the Florida Statutes contain the rules that govern a CDD.
- **Section 4** provides information on the County resources available to residents and visitors. Numerous links throughout this section will direct the reader to the

newly-designed Collier County web site. A wealth of useful information resides on the web site, offering users a convenient way to interact with county government offices, retrieve forms and applications, and download educational resource material on a wide range of topics that impact common interest communities.

This manual is an operational guideline only, and is not intended to give legal, accounting, management or other professional advice. Although care has been taken to ensure that information in this manual is accurate and up-to-date, it relies upon federal, state and local laws, and resources that are subject to periodic change and amendment. All readers should be aware of such possible changes, and should verify the application of laws, regulations and other information with a responsible agency before acting or relying upon them. Professionals should be consulted when deemed necessary.

The links provided that take you to the samples of association notices, ballots, resolutions, and other administratively required materials are presented as being generated from a condominium association. Nonetheless, the format and content of the samples are substantially the same for both condominium and homeowners' associations and can be used as a guide in either setting.

We trust that this manual will prove informative and helpful to the many community associations in Collier County, and we welcome all comments and suggestions for future improvements.

**SECTION 1:  
HOMEOWNERS' ASSOCIATION**



## **HOMEOWNERS' ASSOCIATION OVERVIEW**

In many ways, homeowners' association laws are similar to those that govern condominiums in chapter 718, Florida Statutes. However, Florida condominium law - in existence since 1963 - has had more time to evolve over the years and includes broader and more detailed protections. In a condominium, a unit owner owns his or her defined unit and a percentage of the shared areas or common elements. On the other hand, parcel owners in a homeowners' association own a platted or unplatted lot, tract, unit or other subdivision of real property within the community. The shared areas, or common areas, are owned or leased by the association or dedicated for use or maintenance by the association or its members.

Chapter 720, Florida Statutes – often referred to as the Homeowners' Act – lacks the breadth of its condominium counterpart, Chapter 718, Florida Statutes, though it does share similar requirements in the way of governmental structure (Board of Directors, association officers), noticing meetings, and levying assessments to finance the operations of the association. For better or worse, homeowner associations are different. They take a more lenient approach in the manner in which elections are conducted (i.e., proxies are generally allowed unlike in condo associations, where they are mostly prohibited), but are less inclusive when it comes to member participation at meetings – though many HOA boards operate much as is done in the condominium setting, they are not statutorily obliged to do so.

Homeowner associations are sometimes referred to as “creatures of contract” since much of the governance in HOAs is driven by the contractual nature of parcel owners agreeing to abide by the association covenants rather than the state statute. On the contrary, condominium associations are seen as “creatures of statute” since much of the governmental policy of the association derives from the broader ranging provisions of the Condominium Act.

Attempts have been made to unify the laws between homeowner and condominium associations – or, at least bring them closer together on a procedural and operational level. Occasional concessions have been made in the past but the sweeping changes envisioned by proponents of a unified community association law have yet to materialize.

## **GOVERNING DOCUMENTS**

The association's governing documents include the declaration of covenants together with all adopted and recorded amendments and exhibits as well as the articles of incorporation and the bylaws. Together, the governing documents combine to set out the powers and the limitations on the powers of the homeowners association.

### **Declaration of Covenants**

Chapter 720 of the Florida Statutes (commonly referred to as "the Homeowner's Act") defines the declaration of covenants as the recorded documents that include the rights, liabilities, and commitments governing the use and occupancy of the property governed by the homeowners association.

### **Articles of Incorporation**

The articles of incorporation establish the homeowners association as either a corporation for profit or not for profit. The "articles" include the original document creating the association and all amendments to it and any other documents which define the existing form, membership, and responsibility of the homeowners association. The articles of incorporation become effective and the homeowners association may begin to operate when the articles are filed with the Division of Corporations.

### **Bylaws**

The bylaws of the association govern the operation of the association. While the homeowners association is granted a substantial amount of discretion in establishing specific procedures for the association, the bylaws must be consistent with certain specific operational requirements. Among these requirements are (1) restrictions on the use of proxies, (2) financial reporting obligations by the association, (3) the requirement that all board meetings be open to members of the association, and (4) the requirement that notice be posted for all board meetings.

The association's board and officers must be aware that some requirements may not appear in the bylaws attached to the association documents but, rather, will be found in the statute.

### **Rules and Regulations**

Similar to the recorded declaration of covenants, the rules and regulations of the association are supplemental restrictions authorized by the association bylaws and statute.

## **AMENDING GOVERNING DOCUMENTS**

Statutory Reference

720.306, F.S.

Together, the association's governing documents establish the character for the community and provide the guidelines that set the course for the board of directors and the association membership. When they are created, the documents are written to meet

the developer's plan of how the community will evolve. Over time, as the development matures and the community needs and desires of parcel owners change, the relevance of some portions of the documents decreases. Periodic review of the association documents is always a good idea. Such review can uncover outdated language that no longer complies with the law and could compromise the association's enforcement powers.

The documents can be amended to reflect the current legal and social tenor of the association. Navigating the amendment approval process is sometimes a vague exercise. Often, the restrictions and required votes for approving amendments is found in the association's governing documents. Amendments can be adopted by the board of directors or through membership approval. When unclear which adoption method is valid, membership approval is the recommended course of action, though not required. Unless otherwise set forth in the governing documents, amendments to the documents requires the affirmative vote of two-thirds of the voting interests in the association.

An amendment may not materially and adversely alter a parcel owner's proportionate voting interest or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. Amendments are validly enacted upon attaining the required approval of the association membership specified in the documents and the law.

Sometimes, developers reserve the power in the declaration of covenants to amend or modify the restrictions governing the community. The developer's "reserved power to amend" cannot be applied without the consent of the owners if it compromises the rights of parcel owners to use and enjoy the benefits of the common property. Similarly, neither the developer nor the association is permitted to reduce the size of the common area or limit access of parcel owners to it without the consent of all affected parcel owners.

## **REVIVING GOVERNING DOCUMENTS**

Statutory Reference

720.403-720.407, F.S.

In some associations, the governing documents provide for the expiration of the community covenants after a specified number of years. If they so choose, a community may revive the governing documents of the association by following the procedure described in Chapter 720.403-720.407, F.S.

In general, an organizing committee initiates a revival action by preparing a complete set of documents proposed for revival and identify the parcel owners who will be subject to the revived documents. At least 14 days before approval of the revived documents is to be considered, all affected owners must receive a copy of the proposed documents along with a graphic depiction of the affected property. Agreement of document revival may be obtained by written approval of a majority of the affected parcel owners or by vote at a properly called membership meeting of the property owners.

Once approved, the revived governing documents and other documentation supporting the revival must be forwarded to the Department of Community Affairs. Upon determination that proper procedure was followed, the DCA notifies the association's organizing committee to record the revised documents in the official records of the Collier County Clerk of Courts.

## **PROHIBITED CLAUSES IN ASSOCIATION DOCUMENTS**

Statutory Reference

720.3075, F.S.

The state of Florida prohibits the inclusion or enforcement of certain types of clauses in homeowners' association documents, including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association.

- A developer cannot unilaterally make changes to the homeowners' association documents after the transition of homeowners' association control in a community from the developer to the non-developer members has occurred.
- A developer cannot prohibit or restrict a homeowners' association from filing a lawsuit against the developer.
- After the transition of homeowners' association control in a community from the developer to the nondeveloper members has occurred, a developer is not permitted to cast votes in an amount that exceeds one vote per residential lot.

Such clauses are declared null and void as against the public policy of this state.

Homeowners' association documents may not preclude the display of one portable, removable United States flag by property owners. However, the flag must be displayed in a respectful manner, consistent with Title 36 U.S.C. chapter 10.

Homeowners' association documents entered after October 1, 2001, may not prohibit any property owner from implementing Xeriscape or Florida-friendly landscape. Such landscapes are drought-tolerant, conserve water, and protect the environment.

## **BOARD OF DIRECTORS**

The board of directors is responsible for carrying out the duties and responsibilities of the homeowners association. While the board must consist of at least three individuals, the actual number is fixed in accordance with the articles of incorporation. Directors serve one-year terms unless a different term length is provided in the articles of incorporation or the bylaws. The board of directors may fix the compensation of directors unless otherwise specified in the association bylaws. Board members are not required by law to be property owners but such a restriction may be contained in the governing documents.

## **Election and Filling Vacancies**

Selection of board members is accomplished by either election to the board by association members at an annual or special meeting or by appointment to the board.

Appointment occurs by either the developer if the developer is still entitled to representation or by the remaining members of the board when a board vacancy occurs between membership meetings.

In instances where board vacancies go unfilled to the extent that a quorum cannot be established by the board, any association member may apply to the circuit court for the appointment of a receiver to manage the affairs of the association. Notice of such action must be posted in a conspicuous place in the community and by mailing notice to the association by certified or registered mail. If, after 30 days, the association fails to fill a sufficient number of vacancies to assemble a quorum of the board, the member may proceed with the petition in circuit court.

## **OFFICERS OF THE ASSOCIATION**

Statutory Reference

Resignation and removal of officers 617.0842 (1)&(2), F.S.

The officers of a homeowner association carry out the policies set by the Board of Directors. Unlike the directors, who are elected by the association members, officers are elected or appointed to their positions by the board of directors and serve at the will of the board. The number of officers for each association is found in the articles of incorporation or the bylaws. The officers most commonly described by the association documents are a president, secretary, treasurer, and one or more vice-presidents.

### **President**

The president is traditionally vested with all the powers normally accorded a chief executive officer of a corporation. Though the association's bylaws may vary the duties of office, typically, the president will be the presiding officer at all meetings of the board and the membership.

### **Vice-President**

The vice president is vested with all of the powers required to perform the duties of the association president in the absence of the president and may act for the president only when the president is actually absent or otherwise unable to act.

The board may assign the vice president other areas of responsibility. The duties must be specifically conveyed by the board upon the vice president, and the scope of authority and responsibility should be defined in writing and placed in the minutes or in the bylaws of the association.

### **Secretary**

The secretary is commonly responsible for keeping and maintaining a record of all meetings of the board and membership. Further, the secretary is custodian of the official records of the association. While the role of secretary is often associated with keeping the minutes of board and member meetings, this is not necessarily the case. Often the secretary will delegate the actual recording of the minutes to a recorder or assistant

secretary. Still, responsibility for insuring access to the minutes and other official records of the association rests with the secretary.

## **Treasurer**

The treasurer is traditionally the custodian of association funds, securities, and financial records. In instances where the day-to-day record-keeping is actually handled by another employee or association manager, the duties of the treasurer will include oversight to ensure that the financial records and reports are properly kept and maintained in accordance with good accounting practices.

Unless the bylaws specify otherwise, the treasurer is responsible for coordinating the development of the proposed annual budget and for preparing and giving the annual financial report.

## **MEETINGS**

### **Notice Requirements**

#### **Membership Meetings**

Notice of all membership meetings of the homeowners association must be mailed, delivered, or electronically transmitted to the members not less than fourteen days prior to the meeting. State statute further requires that notices must be placed “in a conspicuous place” in the community. As proof of supplying the required notice, an affidavit executed by the person providing the notice must be filed with the records of the association. Membership meeting notices must contain the date, time, and place where the meeting will be held. To view a sample meeting notice, see page 164.

#### **Board Meetings**

Notice of all board meetings must be posted at least 48 hours prior to the meeting in a conspicuous place in the community. In lieu of posting the notice, it must be mailed or delivered to each member at least seven days before the meeting, except in an emergency.

#### **Broadcast Notice**

Alternatively, the association may adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the association. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

#### **Agendas**

Typically, a set agenda is established in the bylaws of most homeowner associations. If not provided for in the bylaws, and no rules have been adopted by the board, *Robert's Rules of Order* is widely accepted as the *de facto* standard for setting rules of procedure that will govern board meetings. To view a sample Agenda, see page 164.

## **Board of Directors Meetings**

A meeting of the board of directors includes any gathering of a quorum of the board members for the purpose of conducting homeowner association business. A quorum consists of a majority of the members of the board established in the articles of incorporation or the bylaws. The meeting can take place wherever the board of directors finds it necessary, unless otherwise restricted in the bylaws. Remote participation is permitted as long as all directors may simultaneously hear each other during the meeting.

## **Membership Meetings**

### **Annual Meetings**

Homeowner associations are required to hold at least one regular membership meeting each year. The date, time, and place are commonly found in the association's bylaws. Alternatively, the board may set the meeting in the manner required in the bylaws and consistent with the requirements of Chapter 720, F.S.

Elections for the board must take place at, or in conjunction with, the annual meeting unless otherwise provided in the association's governing documents. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Directors must be elected by a plurality of the votes cast by eligible voters, except as otherwise provided in the governing documents. Election disputes between a member and an association must be submitted to mandatory binding arbitration with the Division of Florida Land Sales, Condominiums, and Mobile Homes.

### **Special Meetings**

Special membership meetings must be held in either of two ways; when called by the board or when at least ten percent of the association requests a meeting. Special meetings are limited in their scope and purpose. A notice announcing a special meeting must include a description for which the meeting was called.

### **Participation**

Association members have the right to attend all meetings of the board of directors. While Chapter 720, Florida Statutes does not confer a right upon members to speak at a board meeting, there are exceptions. Members may speak before the board for at least three minutes on any matter that has been placed on the agenda by petition. Twenty percent or more of the total voting interests of the association must file a petition with the board making the request. Note that the board is not obligated to take any particular action requested by the petition, but must address the petitioned item at the meeting.

Though in no way required to do so, many boards take a more lenient approach toward member participation. The association is permitted to adopt written rules allowing members to speak and governing the frequency and the duration of the participation by members at board meetings.

Members are permitted to videotape or record meetings of the board of directors, although the board may adopt reasonable rules to govern the taping.

Some meetings are closed to the membership. These include meetings between the board and the association's attorney concerning pending or threatened litigation as well as meetings of the board held for the purpose of discussing personnel matters.

## **Proxies**

Proxies are permitted for use in election of directors unless otherwise restricted by the association bylaws. Proxies are also allowed in establishing a quorum at all meetings of the membership. Both general and limited proxies are acceptable and the rights granted the proxy holder can be revoked at any time by the executor of the proxy. To view a sample General Proxy, see page 169. For a Limited Proxy, see page 170.

Certain requirements must be met for a proxy to be valid. At minimum, the proxy must be dated, state the date, time, and place of the meeting for which the proxy was given, and be signed by the person who is authorized to grant the proxy. The person who will vote the proxy at a meeting must be identified, either by name or by designating a specific officer of the association, such as the president or secretary.

## **Committee Meetings**

Unless the articles of incorporation or the bylaws prohibit, committees may be created by resolution of the board of directors. Committees contribute a vital service to the association by volunteering their time to focus on particular aspects of association business and community life, allowing the board to carry out their administrative responsibilities.

To view a sample Resolution for creating a committee, see page 172.

## **Architectural Review Committee**

Perhaps the most common committee formed in homeowner associations is the Architectural Review Committee (ARC). Such a committee reviews architectural modifications proposed by parcel owners and is empowered to enforce conformance with the association's architectural standards as prescribed in the governing documents. The ARC, and any other committee vested with the similar powers, must comply with all the notice and meeting procedures required of the board of directors of the homeowners association.

## **Quorum Requirements**

Unless the association bylaws provide a lower number, thirty percent of the voting interests in the homeowner association must be present at a meeting to constitute a quorum.

## **Minutes**

Most boards operate under *Robert's Rules of Order*, either through mandate from the bylaws, or simply because most people are familiar with *Robert's* as a standard reference



for parliamentary procedure. Under *Robert's Rules of Order*, the chair of a meeting typically does not vote, except to break ties. This is not the case for associations. Typically, the chair of board meetings is the association's president, who is also a member of the board. As a member of the board, the president is entitled legally to vote on issues before the board.

A typical set of board minutes should be one to three pages in length. The minutes should reflect:

- The date, time, and place at which the meeting was called to order.
- The presiding officer.
- The establishment of a quorum, with attendees listed by name.
- Proof of proper notice for the meeting.
- Disposal of unapproved minutes from previous board meetings.
- A summary of reports given to the board and a statement by whom the reports were given (a one or two sentence summary is typically sufficient).
- Unfinished business.
- New business.
- Adjournment.

Whenever an item of board business is put to a vote, the person making the motion for approval of the item should be identified in the minutes, as should the name of the person who seconds the motion. The exact wording of the motion should also be included in the minutes. The points raised in debate are typically not included in the minutes.

Chapter 720, F.S. requires the vote of every director to be recorded in the minutes. Accordingly, if five directors vote in favor of a motion and two are opposed, the minutes should reflect the names of the five who voted for the item, as well as the names of the two who voted against. There is a similar requirement in the statute for condominium associations.

As part of the association's official records, the minutes for all meetings must be available for inspection by members or their authorized representatives at any reasonable time. The minutes are to remain a part of the association's official records for at least 7 years.

## **SUNSHINE LAWS**

Florida's Government-In-the-Sunshine Law is frequently cited by community association residents. This is not unexpected. Association boards operate in similar fashion to corporations and governmental bodies, and attract the same degree of scrutiny from the community. While, for the most part, the Sunshine Law is applied equally, HOA boards and parcel owners should be aware that subtle differences do exist. For instance, there is a difference in what constitutes a quorum. The sunshine laws for public officials prohibit two or more public officials from meeting, even if they are less than a quorum. This is not the case for an HOA board, where two directors can discuss association business (except in the case of a three-member board).

In general, a few conditions must be met to remain in compliance with the Sunshine Laws. Notice of association meetings and the right to speak at meetings are among the most commonly mentioned areas of concern. For further information on Florida's Government-in-the-Sunshine Law, visit <http://myfloridalegal.com/sunshine>

### **Notice of Meetings**

Notices of all HOA board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. There is no requirement that an agenda be posted. In lieu of posting, notice of board meetings can be mailed or delivered to each member at least 7 days before the meeting. To view a sample Notice of Meeting, see page 164.

### **Special Assessments**

If assessments are to be considered, or if rules regarding use of the units are to be considered, notice must be given to the owners by mail, hand delivery with written receipt, or electronic notice where the owner has so consented to receiving electronic notice, 14 days before the meeting. Such notices must also be posted fourteen days in advance. To view a sample Special Assessment Notice, see page 184..

### **Participation at Meetings**

Members have the right to attend board meetings which have been called by petition of the association membership and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The bylaws of a homeowners' association may also confer participation rights greater than the statute.

### **Minutes**

The law for homeowners' associations require minutes of board meetings to be kept for seven years, as part of the official records of the association.

### **Committees**

Certain committees must always operate in the sunshine, which means they must post notice of meetings, permit all association members to attend committee meetings, keep minutes, and permit the meetings to be videotaped or recorded with audio equipment.

This applies to HOA committees which can make final decisions regarding the expenditure of association funds, or committees which are vested with the power to approve or disapprove architectural decisions with respect to parcels in the community. In short, any HOA committee which is authorized to spend money must operate in the sunshine.

## **TRANSITION**

Statutory Reference	720.307(3), F.S.
Construction Defects	558, F.S.

Transition (also referred to as “turnover”) is a point that the developer turns over the homeowner association to the property owners. To a great extent, successful transition depends on steady communication and cooperation between the developer and the parcel owners throughout the period of developer control, leading up to the point in time where parcel owners assume majority control of the association’s board of directors.

Parcel owners nearing the transition stage should develop a strong familiarity with the association’s governing documents and other official records of the association. Close examination of the documents will reveal areas that may be detrimental to the association once the developer relinquishes control and it is those areas that the owner-controlled board must address to protect the interests of the membership.

After an Association has transitioned it will become independent of the Developer's support. The Board of Directors must ensure that the developer delivered all that was promised and that the physical property and the association’s finances were properly maintained during the time period the developer was in control of the association. Transition is a time when the Association has the opportunity to detect and resolve potential deficiencies before they become the complete responsibility of the Association. If the transition has been thoroughly and adequately executed and resolved, repairs for construction deficiencies will not burden the membership.

It is important to recognize that the developers’ transition requirements depend on when the association was created. A developer who created an association prior to June 15, 1995 is not held to the statutory provisions that mandate a schedule for transition of control of the board of directors to the members of the homeowner association. For associations created after June 15, 1995, the law provides a schedule of transition from developer control to control by members other than the developer. “Members other than the developer” do not include builders, contractors, or others who purchase a parcel for purposes of constructing improvements on the property for resale.

Additionally, this exemption extends to a homeowners' association, no matter when created, if such association is created in a community that is included in an effective development-of-regional-impact (DRI) development order together with any approved modifications.

At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:

- All deeds to common property owned by the association.
- The original of the association's declarations of covenants and restrictions.
- A certified copy of the articles of incorporation of the association.
- A copy of the bylaws.
- The minute books, including all minutes.
- The books and records of the association.

- Policies, rules, and regulations, if any, which have been adopted.
- Resignations of directors who are required to resign because the developer is required to relinquish control of the association.
- The financial records of the association from the date of incorporation through the date of turnover.
- All association funds and control thereof.
- All tangible property of the association.
- A copy of all contracts which may be in force with the association as one of the parties.
- A list of the names, addresses, and telephone numbers of all contractors, subcontractors, or others in the current employ of the association.
- Any and all insurance policies in effect.
- Any permits issued to the association by governmental entities.
- Any and all warranties in effect.
- A roster of current homeowners and their addresses and telephone numbers and section and lot numbers.
- Employment and service contracts in effect.
- All other contracts in effect to which the association is a party.

### **What do your documents state?**

It is assumed that buyers have read and agreed to their association documents. These documents include the articles of incorporation, by-laws, covenants, conditions and restrictions (CC&Rs), possible management agreement, estimated operating budget, and any long-term lease agreements, if appropriate. Additional items may also be included. These documents will detail what the future board of directors will be responsible to manage, and they could create possible challenges. Therefore, be sure to read the contract before you sign.

## **FINANCIAL**

### **Budget**

The budget must be prepared annually by the community for a twelve-month period. The adopted budget becomes the basis for allocating individual assessments to the membership, the manner of which is established in the association documents. At this time, parcel owners become obligated to pay their assessed share of operating expenses for the community. Meetings of the board concerning establishment of assessments against parcels must be specially prepared to advise parcel owners regarding the nature of assessments. The meeting notice must be mailed, delivered, or electronically transmitted to each member of the association and posted in a conspicuous place on the association property at least 14 days before the meeting.

The board of directors must provide each member with a copy of the approved budget or written notice that a copy is available upon request at no charge to the member.

Unlike condominium associations, homeowner associations are not required to establish reserves for deferred maintenance but a number of associations elect to do so. Refer to the Condominium section of this manual for further information on setting up reserve accounts.

## **Annual Financial Report**

Each year the board must provide a copy of the association's annual financial report or a written notice that a copy of the report is available upon request at no charge to the member. The report must be prepared within sixty days after the close of the fiscal year. Within ten business days of completion, the report must be either provided to the members or written notice of its availability must be given.

### **Report Requirements**

- Compiled financial statements  
Associations with total annual revenues between \$100,000 and \$200,000
- Reviewed financial statements  
Associations with total annual revenues between \$200,000 and \$400,000
- Audited financial statements  
Associations with total annual revenues \$400,000 or more

Associations having annual revenues less than \$100,000 are only required to prepare a report of cash receipts and expenditures. Associations with less than fifty parcels may prepare a report consisting of only cash receipts and expenditures, regardless of the annual revenues, unless the governing documents of the association require otherwise.

## **ASSESSMENTS**

Every parcel owner is liable for all assessments or amenity fees which come due while he or she is the owner. Assessments are allocated among the individual members of the homeowner association in a proportional manner described in the governing documents of the community. The board of directors is vested with the power to establish and collect the assessments and to additionally establish the time when each assessment or assessment installment is due.

### **Enforcement Powers**

The association maintains enforcement rights in the collection of assessments. Delinquent parcel owners are subject to liens on their property. Other enforcement measures at the association's disposal include fines or suspension of the right to vote or the right to use the recreational amenities and common areas of the community when the governing documents permit.

### **Responsibility of the Developer**

The developer's responsibility for assessments begins at the time that the association is created. At first, the developer's assessment obligation pertains to all parcels and decreases as parcels are sold to individual owners unless the developer is excused from payment of operating expenses and assessments by the declaration of covenants.

## **USE RIGHTS**

Statutory Reference

720.305, F.S.

The right of parcel owners to use the association's common areas is described in Chapter 720.305, F.S. The board may restrict or suspend these rights on behalf of the association for an owner's failure to pay assessments or other violations of the community's covenants and restrictions. However, suspension of use rights may not impair the right of a parcel owner or the tenant of a parcel to have vehicular and pedestrian ingress and egress to and from the parcel, including the right to park an authorized motor vehicle.

Any parcel owner prevented from exercising the rights guaranteed by the law for use of the common or recreational facilities may petition the Department of Business and Professional Regulation for mandatory mediation to protect those rights. Further, if mediation is unsuccessful, a parcel owner may bring a civil action to enforce guaranteed rights.

## **OFFICIAL RECORDS**

Statutory Reference

720.303(4)(5), F.S.

The official records consist of all of the documents creating and governing the homeowners association. The records must be maintained by the association in the state of Florida and, upon written request, made available to members or their authorized representative for their inspection. Failure to comply with a written request for access within ten (10) business days entitles the member to damages from the association for its willful failure to provide the records. The parcel owner is not required to give a reason for the inspection request and the association may not adopt and impose a rule for doing so.

### **Photocopy Requests**

Member requests for photocopying of the records must be granted by the association. Though the association may not charge members a fee for simply inspecting the official records, it may impose a fee to cover the cost of copying them. If the association has a copy machine available and the request is for 25 pages or less, the association may charge up to 50 cents per page for the copies. In instances where the association does not have a copy machine available or where copy requests exceed 25 pages, the association may have copies made by an outside vendor and charge the member for actual costs of copying.

While nearly all of the association's official records are available for inspection by the membership, there are exceptions. These include:

- Information obtained by the association in connection with the approval of a sale or other transfer of a parcel;
- Personnel records of association employees;

- Medical records of community residents; and,
- Records protected by the attorney-client privilege prepared by the association attorney for pending or imminent legislation.

### **Required Records to be Maintained**

The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.
- A copy of the bylaws of the association and amendment.
- A copy of the articles of incorporation of the association and amendments.
- A copy of the declaration of covenants and amendments.
- A copy of the current rules of the homeowners' association.
- The minutes of all meetings of the board of directors and of the members. Minutes must be retained for at least 7 years.
- A current roster of all members and their mailing addresses and parcel identifications. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the association's insurance policies or a copy thereof. Policies must be retained for at least 7 years.
- A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  1. Accurate, itemized, and detailed records of all receipts and expenditures.
  2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.
  4. Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary described in s. [720.401](#)(1).
  - All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

## **ASSOCIATION CONTRACTS**

Statutory Reference

720.3055, F.S

Any contract that is not to be fully performed within one year for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association that exceeds 10 percent of the total annual budget of the association, including reserves, the association must obtain competitive bids for the materials, equipment, or services. The association is not required to accept the lowest bid.

Contracts not subject to competitive bid requirements include contracts with employees of the association, as well as contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services.

A contract executed before October 1, 2004, and any renewal thereof, is not subject to the competitive bid requirements. Renewal of a contract awarded under the competitive bid procedures of the state statute, is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to an association under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. An association whose declaration or bylaws provide for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of the statutory requirement if those provisions are not less stringent than the requirements of 720.3055, F.S.

The association shall not be limited by the competitive bid requirement to obtain needed products and services in an emergency. Similarly, the association is not bound by the competitive bid requirement 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.

## **ELECTIONS**

Statutory Reference



Elections	720.306(9), F.S.
Proxy voting	720.306(8), F.S.
Disputes	720.306(9), F.S.

Elections in homeowner associations are not statutorily regulated to the degree found in condominium associations. In fact, the only guidance provided for elections in Chapter 720, F.S. refers to the procedures set forth in the governing documents of the association – typically the association’s articles of incorporation or the bylaws.

All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

### **Proxies**

Proxies are permitted for use in election of directors unless otherwise restricted by the association bylaws. Certain requirements must be met for a proxy to be valid. At minimum, the proxy must be dated, state the date, time, and place of the meeting for which the proxy was given, and be signed by the person who is authorized to grant the proxy. The person who will vote the proxy at a meeting must be identified, either by name or by designating a specific officer of the association, such as the president or secretary. To view a sample General Proxy, see page 169. To view a sample Limited Proxy, see page 170.

### **Disputes**

Any election dispute between a member and an association must be submitted by petition to mandatory binding arbitration with the Division of Florida Land Sales, Condominiums and Mobile Homes. Further information on filing a petition for arbitration can be found at <http://www.myflorida.com/dbpr/lsc/LSCMHHOAForms.html>

## **RECALL OF DIRECTORS**

Statutory Reference	
Recall of Directors	720.303 (10), F.S.
Resignation of Directors	617.0807, F.S.
Petition for Receiver	720.305 (4), F.S.

Any member of the board of directors may be recalled and removed from office with or without cause by a majority of the total voting interests. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. Or, if the declaration, articles of incorporation, or bylaws specifically provide, the members may also recall and remove a board director or directors by a vote taken at a meeting.

Further information can be found at <http://www.myflorida.com/dbpr/lsc/LSCMHHOAprocedures.html>

## **Recall by Written Agreement or Written Ballot**

The agreement in writing or the written ballots, or a copy, shall be served on the association by certified mail or by personal service. Once received, the board shall duly notice and hold a meeting of the board within 5 full business days. At the meeting, the board shall decide whether or not to certify the written ballots or written agreement to recall a director or directors of the board.

If the board certifies the recall, each director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession. If the board decides not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file a petition for binding arbitration with the Department of Business and Professional Regulations.

When recall of at least a majority of the board is sought, the agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall. The person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

## **Recall By Vote Taken At a Called Meeting**

If so provided in the governing documents, a special meeting of the members to recall a director or directors of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more directors. At the meeting, the board shall decide whether or not to certify the recall.

If the board certifies the recall, each director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession. If the board decides to not certify the recall, the board shall, within 5 full business days after the meeting, file a petition for binding arbitration with the Department of Business and Professional Regulations.

Members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any director or directors of the board, the recall will be effective upon mailing of the final order of arbitration to the association. The recalled director or directors 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.

If a director who is removed fails to relinquish his or her office or turn over the required records, the circuit court in the county where the association maintains its principal office may, upon the petition of the association, summarily order the director to relinquish his or her office and turn over all association records upon application of the association.

### **Filling Board Vacancies Resulting From Recall**

If a vacancy occurs on the board as a result of a recall and less than a majority of the board directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors. If vacancies occur on the board as a result of a recall and a majority or more of the board directors are removed, the vacancies shall be filled by members voting in favor of the recall; if removal is at a meeting, any vacancies shall be filled by the members at the meeting. If the recall occurred by agreement in writing or by written ballot, members may vote for replacement directors in the same instrument in accordance with procedural rules adopted by the Division of Land Sales, Condominiums, and Mobile Homes.

### **Failure of Board to Call Meeting**

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

The minutes of the board meeting at which the board decides whether to certify the recall are an official association record. The minutes must record the date and time of the meeting, the decision of the board, and the vote count taken on each board member subject to the recall. In addition, when the board decides not to certify the recall, as to each vote rejected, the minutes must identify the parcel number and the specific reason for each such rejection.

When the recall of more than one board director is sought, the written agreement, ballot, or vote at a meeting shall provide for a separate vote for each board director sought to be recalled.

### **Failure to Establish Quorum Due to Board Vacancies**

If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum, any member may apply to the circuit court that has jurisdiction over the community served by the association for the appointment of a receiver to manage the affairs of the association. At least 30 days before applying to the circuit court, the member shall mail to the association, by certified or registered mail, and post, in a conspicuous place on the property of the community served by the association, a notice describing the intended action, giving the association 30 days to fill the vacancies. If during such time the association fails to fill a sufficient number of vacancies so that a quorum can be assembled, the member may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, attorney's fees, and all other expenses of the receivership. The receiver has all

the powers and duties of a duly constituted board of directors and shall serve until the association fills a sufficient number of vacancies on the board so that a quorum can be assembled.

### **Resignation of Directors**

A director may resign at any time by delivering written notice to the board of directors or its chair or to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date but the successor cannot take office until the effective date.

## **REMEDIES FOR RULES VIOLATIONS**

Suspension of common-area-use rights

720.305(2), F.S.

### **Fines and Suspensions**

If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a parcel.

### **Fining Procedure**

A fine may not be imposed without notice of at least fourteen days to the person sought to be fined and an opportunity for a hearing before a committee of at least three members appointed by the board. Fining committee members cannot be officers, directors, or employees of the association, nor can they be the spouse, child, parent, brother, or sister of an officer, director, or employee. A fine may not be imposed if the fining committee, by a majority vote, does not approve of the proposed fine. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court.

Suspension of common-area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

If the governing documents so provide, an association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

## DISPUTE RESOLUTION

Statutory Reference

720.311, F.S.

Despite best intentions, homeowner associations will encounter rules violations on occasion. Often, disputes that arise between the association and parcel owners or between parcel owners themselves can be resolved without outside intervention. In cases where this is not possible, the state offers mediation and arbitration procedures to settle disputes. The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation.

### Mediation procedure

Disputes between an association and a parcel owner shall be filed with DBPR for mandatory mediation before the dispute is filed in court. Disputes eligible for mediation include:

- use of or changes to the parcel or the common areas and other covenant enforcement disputes;
- disputes regarding amendments to the association documents;
- disputes regarding meetings of the board and committees appointed by the board;
- membership meetings (not including election meetings); and,
- access to the official records of the association.

Neither election disputes nor recall disputes are eligible for mediation; these disputes shall be arbitrated by the department.

Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator.

Persons who are not parties to the dispute may not attend the mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. [720.303](#).

The department shall conduct the proceedings through the use of department mediators or refer the disputes to private mediators who have been duly certified by the department. A mediator or arbitrator shall be certified by the department only if he or she has attended at least 20 hours of training in mediation or arbitration, as appropriate, and only if the applicant has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application and has completed 20 hours of training in community association disputes. In order to be certified by the department, any mediator must also be certified by the Florida Supreme Court.

The parties shall share the costs of mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise. If a department mediator is used, the department may charge such fee as is necessary to pay expenses of the mediation, including, but not limited to, the salary and benefits of the mediator and any travel expenses incurred.

If mediation is not successful in resolving all issues between the parties, the parties may file the unresolved dispute in court or elect to enter into binding or nonbinding arbitration pursuant to the procedures set forth in s. [718.1255](#) and rules adopted by the division, with the arbitration proceeding to be conducted by a department arbitrator or by a private arbitrator certified by the department. If all parties do not agree to arbitration proceedings following an unsuccessful mediation, any party may file the dispute in court. A final order resulting from nonbinding arbitration is final and enforceable in the courts if a complaint for trial de novo is not filed in a court of competent jurisdiction within 30 days after entry of the order.

### **Mediation and Arbitration Filing Process**

Creation of a mandatory mediation and arbitration program under the Division of Florida Land Sales, Condominiums, and Mobile Homes (“Division”), within the Department of Business and Professional Regulation is a significant change to Florida Statute 720. The program provides the means to resolve disputes between homeowners and homeowners’ associations in a more timely, reasonable, and economical manner, prior to filing a lawsuit.

### **When Mediation is Required**

Mediation through the Division program is required prior to filing a lawsuit only if the dispute between a homeowner and a homeowners’ association involves:

1. Use of or changes to the parcel or the common areas and other covenant enforcement disputes;
2. Amendments to the association documents;
3. Meetings of the board and committee appointed by the board, membership meetings not including election meetings; and,
4. Access to the official records of the association.

### **When Arbitration is Required**

Arbitration through the Division program is required for all recall and elections disputes, prior to filing a lawsuit.

### **When Arbitration is Voluntary**

If mediation through the Division program is unsuccessful, the parties may choose to arbitrate their dispute(s) with the Division. The parties may also choose whether or not voluntary arbitration due to unsuccessful mediation is a binding or non-binding decision on the parties.

The Division does not have legal jurisdiction to hear a dispute if the issue, dispute, or complaint does not deal with any of the above listed disputes authorized to be resolved

through the Division's mandatory mediation and arbitration program. If a complaint cannot be addressed through arbitration or mediation, the Division will make every effort to direct you to the proper agency.

### **Difference between a mediation and arbitration procedure**

Mediation and arbitration both provide for alternative means of resolving a dispute without going to court, but they are different. The difference between mediation and arbitration is that mediation is a non-adversarial proceeding, whereas, arbitration is considered adversarial. In a successful mediation, there are no winners or losers, the parties collectively come to a settlement agreement that is facilitated by a neutral third-party called a mediator. The terms of the settlement agreement are reduced to writing, signed by the parties and the mediator, and the final settlement agreement is considered a binding legal contract.

In arbitration there is a petitioner and a respondent in each case, both presenting their cases before a neutral third-party called an arbitrator. An arbitrator is the fact finder or judge in an arbitration proceeding. Arbitration is conducted very similar to a trial, including the giving of opening and closing statements, the presenting of evidence, and sworn witness testimony. Unlike mediation, it is the arbitrator, rather than the parties, who makes the final decision in an arbitration proceeding, which is then reduced to writing in a Final Order and forwarded to both parties.

It is strongly recommended that a person seek legal counsel whenever an issue of law could affect an individual's rights, or when a person is considering taking legal action against another. However, parties to mediation or arbitration can choose to represent themselves or have a qualified representative present their case rather than an attorney. There are cases where mediation or arbitration parties represent themselves and are successful in their proceedings. It is important to remember that if you appear on behalf of another party, you must be either a Florida licensed attorney in good standing or have been designated as their qualified representative and have completed and submitted the qualified representative form to the Division.

### **How to file for mediation or arbitration**

The party filing for mediation or arbitration is designated as the petitioner. The filing process begins by selecting the appropriate form (depending upon the disputed issue) and filing it with the Division, either by mail or by facsimile. All HOA arbitration and mediation forms can be found by visiting <http://myflorida.com/dbpr/lsc/LSCMHHOAForms.html>

If mailing a petition, please send the completed and signed petition, along with the \$200 filing fee to:

Department of Business and Professional Regulation  
Division of Florida Land Sales, Condominiums, and Mobile Homes  
1940 N. Monroe Street  
Tallahassee, FL 32399

Faxed petitions should be sent to 850-921-5446. The \$200 filing fee must also be forwarded before a petition will be processed. Filing fees are the initial costs required in order to proceed with your petition and are nonrefundable.

Chapter 720, Florida Statutes, requires that parties to mediation share the costs of the mediation equally (unless the parties agree otherwise), which would include the initial \$200 filing fee paid by the petitioner. Upon billing the parties at the close of mediation, the petitioner's total mediation costs will be reduced by \$100, while the responding party's costs will include an additional \$100 for their half of the initial filing fee. In a successful arbitration proceeding, Chapter 720, Florida Statutes, requires that the winning party be awarded reasonable costs and attorney fees, which would include the initial filing fee.

## **SLAPP SUITS**

Statutory Reference

720.304(4), F.S.

The Legislature recognizes that "Strategic Lawsuits Against Public Participation" or "SLAPP" suits, as they are typically called, have occurred when members are sued by individuals, business entities, or governmental entities arising out of a parcel owner's appearance and presentation before a governmental entity on matters related to the homeowners' association. However, it is the public policy of this state that government entities, business organizations, and individuals not engage in SLAPP suits because such actions are inconsistent with the right of parcel owners to participate in the state's institutions of government. 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 which are subject to chapter 286.

In essence, the statute states that homeowner associations are not to attempt to quiet complainers by filing a SLAPP suit against them. Additionally, the association may not expend association funds in prosecuting a SLAPP suit against a parcel owner. The court should expeditiously dispose of any SLAPP suit in a homeowners' association case.



## **SECTION 2: CONDOMINIUM ASSOCIATIONS**

## **CONDOMINIUM ASSOCIATION OVERVIEW**

Condominiums represent a large percentage of housing options in Collier County. Permanent and seasonal residents are attracted to the maintenance-free lifestyle and the variety of services and amenities provided in these common interest communities. While the benefits derived from condominium ownership are appealing, they nonetheless require each unit owner to accept rules and regulations that, at times, may infringe on personal liberties in the interest of the common good of the association.

Unlike homeowner associations, the operation and management of condominium associations is highly governed by Florida law. Florida Statute 718 sets out the procedures and requirements that associations must follow. The provisions are in place to protect the interests of the association and the individual unit owners but the intent and reality sometimes conflict.

The material in this section will provide general guidance on some of the major aspects of association living and governance. The reader should understand that this is not an exhaustive treatise. Rather, it should be used as a general resource and a launching point that will lead the reader to more detailed information on topics mentioned in this section. A particularly useful source of information is the web site for the Department of Business and Professional Regulation (DBPR). Visit <http://www.state.fl.us/dbpr/> to find necessary forms and informative educational materials. Click on the Land Sales, Condominiums and Mobile Homes link, then the Condominiums link, which will take you to a web page where multiple links are provided that cover a wide range of condominium-related information.

Reference throughout this section will be made to Florida Statute 718 – the formal name – and, on occasion, as The Condominium Act. Often, discrepancies arise between the statute and the association’s governing documents. You will find that the statutes provide guidelines for associations to follow but your governing documents contain the refinements unique to the needs and the will of association members. Board members will be best served by acquainting themselves with the governing documents of the association and how they relate to Florida Statute 718. Unit owners should follow this advice as well, though their fiduciary responsibility to the association in no way approaches that of board members.

Readers are reminded that the statute changes from time to time to reflect changing needs and conditions. In fact, a number of amendments are up for legislative consideration at the time of this writing. Given that, the information provided in this manual is furnished to educate, but should not be the basis for forming legal opinion. For matters requiring interpretation or clarification, associations and unit owners should consult appropriate professionals trained in their discipline of concern.

## **DIRECTORS AND OFFICERS**

### **Board of Directors**

The board of directors is responsible for managing the affairs of the association. A director is expected to carry out his or her powers and duties, as any other ordinarily prudent person would do under reasonably similar circumstances. Directors have a fiduciary relationship with the unit owners, and have the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.

### **Developer-Appointed Board**

The board of directors is the legal entity representing all of the owners. The first complete board is created by the developer at the time that the condominium is created. During the time when the board is under developer control, violations of the Condominium Act are the responsibility of the developer.

### **Owner-Controlled Board**

The Condominium Act provides for gradual owner representation to the association's board of directors (see Turnover section in this manual). Over time, upon reaching statutorily prescribed thresholds of ownership, the owners assume majority control of the board and, ultimately, total control upon completion of the development.

Once total owner control is achieved, there are two methods for selecting and electing board members. The most common method is election by association members at an annual or special meeting. The election must be preceded by the qualification of candidates and noticing requirements – as described in the Election section in this manual – must be followed.

Alternatively, the second method of selection is by appointment to the board by the existing members of the board. The appointment may occur by the developer if the developer is still entitled to board representation or by the remaining board members when a vacancy on the board occurs between membership meetings.

### **Eligibility**

Any unit owner who is age 18 or older is eligible to serve on the board. The only exception is if the person has been convicted of a felony in the United States and whose right to vote remains suspended. Any other restrictions to the statute must be contained in the governing documents.

### **Compensation**

Members of the board serve without compensation unless the bylaws of the association provide otherwise.

## **Committees**

The board may appoint committees to assist with the various duties of the association. Often such committees include a Bylaws Committee, Budget Committee, and Grounds Committee. Effective committees are important to a well-run condominium association because they help the board carry out its powers and duties.

Committees of the board are created by resolution of the Board of Administration. To view a sample resolution for creating a committee, see page 172.

## **Officers**

The officers of a condominium association carry out the policies set by the Board of Directors. Unlike the directors, who are elected by the association members, officers are elected or appointed to their positions by the board of directors and serve at the pleasure of the board. The number of officers for each association is found in the articles of incorporation or the bylaws. The officers most commonly described by the association documents are a president, secretary, treasurer, and one or more vice-presidents.

### **President**

The president is traditionally vested with all the powers normally accorded a chief executive officer of a corporation. Though the association's bylaws may vary the duties of office, typically, the president will be the presiding officer at all meetings of the board and the membership.

### **Vice-President**

The vice president is vested with all of the powers required to perform the duties of the association president in the absence of the president and may act for the president only when the president is actually absent or otherwise unable to act.

The board may assign the vice president other areas of responsibility. The duties must be specifically conveyed by the board upon the vice president, and the scope of authority and responsibility should be defined in writing and placed in the minutes or in the bylaws of the association.

### **Secretary**

The secretary is commonly responsible for keeping and maintaining a record of all meetings of the board and membership. Further, the secretary is custodian of the official records of the association. While the role of secretary is often associated with keeping the minutes of board and member meetings, this is not necessarily the case. Often the secretary will delegate the actual recording of the minutes to a recorder or assistant secretary. Still, responsibility for insuring access to the minutes and other official records of the association rests with the secretary.

## **Treasurer**

The treasurer is traditionally the custodian of association funds, securities, and financial records. In instances where the day-to-day record-keeping is actually handled by another employee or association manager, the duties of the treasurer will include oversight to ensure that the financial records and reports are properly kept and maintained in accordance with good accounting practices.

Unless the bylaws specify otherwise, the treasurer is responsible for coordinating the development of the proposed annual budget and for preparing and giving the annual financial report.

## **ASSOCIATION AUTHORITY AND RESPONSIBILITIES**

### **Maintenance of the Common Elements**

#### Statutory References

Alterations and Additions	718.113, F.S.
Insurance	718.111(11), F.S.
Responsibility	718.113(1), F.S.

Maintenance of the common elements is described in Section 718.113, F.S. In this section, the statute states that maintenance of the common elements is the responsibility of the association. Furthermore, Section 718.113(1), F.S., states that the declaration may provide that limited common elements will be maintained by those entitled to use the limited common elements. If this provision is not made, then the limited common elements will remain the responsibility of the association to maintain.

The board of directors is not required to physically perform maintenance duties but to take action necessary for a sound maintenance program. This involves planning for current as well as future maintenance activities. A maintenance program should include procedures for responding to emergencies as well as routine repair and preventive maintenance needs.

The board of directors may determine that there is a need for professional assistance, particularly in connection with maintenance activities. Placing the primary responsibility of maintaining the common elements in the hands of a management company can make the board's job easier, but the ultimate responsibility will remain with the board. The management company can provide valuable expertise; however, policy decisions must be made by the board of directors.

Please note the difference between the responsibility for maintaining the common elements and the necessity for the association to provide adequate insurance. Should the association not have insurance to cover some specific damage caused by the common elements, it still remains the association's responsibility to maintain, repair, or replace the damaged component of the common elements.

## **Insurance**

### **Directors and Officers Liability Insurance**

A D&O policy (also known as E&O – errors and omissions) is essential for all board members. It provides coverage in a defense if a suit is brought against the association or board directors.

### **Casualty Insurance**

This type of insurance pays to reconstruct the condominium property following a calamity such as a fire or hurricane. The statute should be reviewed to determine that covered by the association's policy and what is the responsibility of individual unit owners.

### **Flood Insurance**

The requirements for your association should be contained in the declaration of condominium. In any event, most associations carry a master policy for flood insurance. In fact, depending on location, mortgage requests will be refused if adequate flood insurance is not in place.

### **Liability Insurance**

This type of policy protects the association against personal injury claims. Check to be sure that the coverage provided by your policy is up-to-date and sufficient to cover current-day risks.

### **Workers' Compensation**

Often addressed in the declaration of condominium, this policy provides protection if an uninsured worker is injured on association property. The added benefit to the association is that the policy eliminates the injured party's right to sue the association since workers' compensation is the exclusive remedy for injured workers.

### **Hurricane Shutters**

Statutory reference

718.115(e), F.S.  
718.113(5), F.S.

Installation, replacement, operation, repair, and maintenance of hurricane shutters by the board shall become a common expense borne by the association. A unit owner who has previously installed hurricane shutters or laminated glass architecturally designed to function as hurricane protection which complies with the applicable building code shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner shall remain responsible for the pro rata share of expenses for hurricane shutters installed on common elements and association property and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters.

Each board of directors shall adopt hurricane shutter specifications for each building within each condominium operated by the association. Specifications shall include color, style, and other factors deemed relevant by the board. All adopted specifications shall comply with the applicable building code. A board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board. The Board will establish rules, through formal resolution, for the installation of hurricane shutters. To view a sample resolution, see page 188.

The board may, subject to the provisions of s. [718.3026](#), and the approval of a majority of voting interests of the condominium, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters, whether on or within common elements, limited common elements, units, or association property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the board may not install hurricane shutters.

The board may operate shutters installed without unit owner permission only where such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters shall not be deemed a material alteration to the common elements or association property.

## **RULES ENFORCEMENT**

Statutory Reference

718.303, F.S.

Condominium association rules are often described as a mechanism that grants rights and imposes obligations. As such, it is clear that instances will occur in such a shared living environment where rights are obstructed or obligations are unmet. To maintain the character of the condominium form of living, resolutions to rules infractions must be addressed.

To protect their rights, unit owners are entitled to insist on enforcement of the governing documents against other unit owners or the association. The board of directors is charged with enforcing the association rules when violations are brought to their attention. Timely, consistent enforcement is important. A request for enforcement action left unaddressed opens the association to rebuttal that the rules are being arbitrarily enforced and dilutes the validity of the association's rules enforcement powers.

Violations can often be rectified internally. The board must notify the offender of the rules violation, referencing the rule or paragraph prohibiting the conduct. The notice should allow the unit owner to correct the deficiency, setting a reasonable deadline to voluntarily comply. It is recommended that the board document the circumstances of the incident and the steps taken to address the violation. Such evidence will be useful should formal enforcement action be required to bring about compliance.

## **Fines and Penalties**

Associations are granted limited fining authority by the Condominium Act. Authority to fine must be specified in the declaration of condominium or the bylaws. Fines may be levied against a unit owner or guest of the unit owner. Violators are entitled to notice and opportunity for a hearing before a committee of unit owners. If the committee does not approve the fine, it may not be levied.

No fine may exceed \$100 per day and may not exceed \$1,000 in the aggregate. Additionally, the fine cannot become a lien against the unit.

## **Right of Access to Units**

Statutory Reference

718.111(5), F.S.

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 or units.

The Condominium Act does not specify how the association is to enter the unit. This information may be found in the documents or rules of the association. For instance, many documents require that a key be left with the association. If this is so, it is suggested that the board establish procedures to ensure the keys are safely stored and strict controls are placed on those having access to them.

## **RESTRICTIONS AND RESPONSIBILITIES OF UNIT OWNERS**

Although buying a condominium unit offers advantages over buying a single family home, there are restrictions and responsibilities that accompany condominium ownership.

### **Restrictions**

Restrictions on the use of both the individual unit and the common elements help to preserve the best interests of all unit owners. Many condominiums provide for limitations on the use, occupancy, and transfer of a condominium unit. For example, there may be restrictions on types of window coverings, pets, leasing, and the number of unit occupants.

Just as the use of the unit may be restricted, so may the use of the common elements. While all unit owners have the right to use the common elements, they must use them in the manner provided in the condominium documents and in the rules and regulations adopted by the board of directors of the association. Typical restrictions on the use of the common elements include limitations on parking and types of vehicles allowed on the premises, limitations on modifications to the condominium exterior, and restrictions on the use of recreational and other common facilities.



Since each condominium association has its own set of documents, the only way to determine the specific restrictions pertaining to a particular condominium is to review those documents. In addition to the use restrictions provided in the declaration of condominium, bylaws, and articles of incorporation, the Condominium Act gives the board of directors the authority to adopt reasonable rules and regulations concerning the use of the common elements, common areas, and the recreational facilities. Restrictions are subject to change when the board of directors or unit owners properly amends the documents to provide for such a change.

## **Financial Responsibilities of Unit Owners**

The cost of operating and maintaining the condominium is funded through collection of assessments by the association. Unit owners pay assessments for their shares of the common expenses according to the proportions or percentages set forth in the declaration of condominium. In a residential condominium, a unit owner's share of common expenses must be in the same proportions as their ownership interest in the common elements and the common surplus or deficit. Also, for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each unit is required to be based either on square footage or on an equal fractional basis. Unit owners are expected to pay assessments; therefore, assessments cannot be avoided by a unit owner choosing not to utilize various common facilities.

Assessments to unit owners vary depending upon the amenities and level of services being offered in a particular condominium. If you are purchasing a unit from a developer, you are entitled to receive an estimated operating budget showing the expected costs of operating the condominium prior to closing on your unit. Note that the budget is based on estimated expenses and may differ significantly from the actual cost of association operations. Developers often provide a guarantee of assessments for one or more fiscal periods. Such guarantees typically hold assessments to a lower amount than might occur without the developer's guaranteed subsidy. Purchasers can expect an increase in the budget after the guarantee period expires.

Unit owners may also expect to face special assessments. These assessments are in addition to the regular assessments that each unit owner pays. Special assessments are typically levied when the association determines that there is either not enough money in the budget for a particular expenditure, or the expenditure was not anticipated and therefore was not included in the annual budget. Condominium documents often contain restrictions on the board's ability to levy special assessments. Some of the expenses which may be found in a condominium budget include:

- administration
- management fees
- maintenance
- insurance, taxes
- garbage collection

- pest control
- utilities for common areas, and
- reserves for capital expenditures and deferred maintenance.

There are requirements in both the Condominium Act and the Division’s administrative rules regarding how these expenses should be disclosed. In addition, the unit owner should expect to be individually responsible for such items as:

- real estate taxes
- cost of private telephone service and equipment
- insurance covering the contents and interior of the unit
- maintenance of the interior of the condominium unit
- privately contracted janitorial or maid services, and
- utility costs billed directly to the unit owner.

Further information along these lines may be found in the condominium documents.

## **DOCUMENTS AND ASSOCIATION RULES**

Statutory Reference

Declaration	718.104
Bylaws	718.112 F.S.
Articles of Incorporation	718.112(1)(b) F.S.
Rules and Regulations	718.123 F.S.

Not only must condominium associations comply with certain Florida Statutes, they must also comply with a set of documents, commonly referred to as the association’s “governing documents.” These documents include the declaration of condominium, the articles of incorporation, the bylaws, rules and regulations, and amendments and exhibits to these items.

### **Hierarchy of Governing Documents**

Assuming that all provisions in the governing documents comply with the law, the order of precedence in matters where a conflict among document language exists is:

- Declaration of condominium
- Articles of Incorporation
- Association bylaws
- Rules and regulation attached to the recorded declaration of condominium
- Rules and regulations promulgated by the board of directors
- Policy statements and resolutions of procedure

Federal and state law takes precedence where the governing documents are found to be out of compliance.

## **Declaration of Condominium**

The principal document is the declaration of condominium, which submits the property to the condominium form of ownership and, when recorded, creates the condominium. This document must be recorded in the county records where the condominium is located. It is in the declaration that most rights and restrictions of unit owners are set forth. The declaration is controlling over all other condominium documents but is subordinate to the provisions of the applicable state and federal law. For example, if the declaration and bylaws contain contradictory provisions, the provision in the declaration would prevail. However, if the declaration conflicts with provisions in the Condominium Act (718, F.S.) the statute would generally prevail as there may be exceptions provided in the statute.

Section 718.104, F.S. requires that the declaration must contain or provide for the following items:

1. A statement submitting the property to condominium ownership.
2. The name of the condominium
3. A legal description of the land
4. An identification of each unit
5. A survey of the land, graphic depiction of the improvements, and the plot plan
6. Each unit's share in the common elements
7. Each unit's percentage and manner of sharing common expenses and common surplus
8. The name of the association
9. The unit owner's membership and voting rights in the association
10. The articles of incorporation, or other document that creates the association
11. The bylaws of the association
12. Provisions for non-exclusive easements for ingress and egress, which basically provide access to the property
13. If the condominium will have time-share units, a statement to that effect

The declaration may contain other provisions; however, they should not be inconsistent with the Condominium Act. The declaration and any amendments to it must be recorded in the county records in order to be effective.

## **Articles of Incorporation**

The articles of incorporation are the set of documents that establish the association as a corporation. The articles must be attached as an exhibit to the declaration of condominium, and they must be recorded in the public records of the county where the condominium is located. In addition, the articles must be filed with the Florida Department of State, Division of Corporations. The Condominium Act states that no amendment to the articles is valid unless it is recorded in the public records where the declaration is recorded.

The articles establish the association as either a not-for-profit or for-profit corporation. Although the Condominium Act does not address the items that must be included in the articles, the Corporate Acts (Chapters 607 and 617, F.S) do set forth requirements for this document. The articles generally contain provisions for the corporate powers, voting rights, and duties of the directors and officers. Other provisions may be included which are not inconsistent with the Condominium Act or the declaration of condominium.

## **Bylaws**

The bylaws usually address procedural matters of the association such as financial issues, noticing of meetings, quorum requirements, and recall. The Condominium Act (specifically 718.112) requires the bylaws to include certain provisions; and, if they do not, are **deemed to include those provisions**. The bylaws may have additional provisions if they are not in conflict with the declaration, articles of incorporation, or expressly limited or restricted by the Condominium Act and administrative rules. Some of the provisions that are “deemed” to be in the bylaws are:

- **The form of administration of the association.** This includes the number of board members, the powers and duties of each board member and officer, and whether or not they will be compensated. If the bylaws do not contain such a provision, the board will be composed of five members. Not-for-profit condominium associations with five or fewer units must have at least three board members. Unless the bylaws provide otherwise, board members and officers, which shall include a president, secretary, and treasurer, shall serve without compensation.
- **Complaints received by certified mail.** The board shall respond to the unit owner within 30 days of receipt of the owner’s complaint. Failure to act within 30 days precludes the board from recovering attorney’s fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint. For more information, refer to Section 718.112(2)(a)2., Florida Statutes.
- **The percentage of voting interests that is necessary to constitute a quorum.** Quorum requirements are discussed in the “Meetings” section.
- **The conduct of board of administration meetings.** Meetings of the board and certain committees shall be open to unit owners and may be tape recorded or videotaped. Notice requirements are also included. For more information, refer to Section 718.112(2)(c), F.S., and 718.103(6), F.S.
- The noticing requirements for unit owner meetings and election of the board of administration. For more information, refer to Section 718.112(2)(d), F.S.
- The noticing requirements for the budget meeting, identifying who has the authority to adopt the budget (the board or the unit owners), and the rights of unit owners to request an alternate budget meeting.
- The manner for collecting from the unit owners their share of the common expenses. This method is described under “Assessments” in this manual.
- The method for amending the bylaws.

- If approval is required in order to transfer title of a unit, it must be stated, along with related fees that will be collected, if any.
- The fidelity bonding requirements for the president, secretary, treasurer, and any other person that is authorized to sign checks.

Optional provisions that may be included in the bylaws include:

- A method for adopting and amending rules and regulations governing the operation and use of the common elements;
- Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements; and,
- Other provisions which are not inconsistent with Chapter 718, F.S., or the declaration.

The bylaws and any amendments to them must be recorded in the public records of the county where the declaration is recorded.

### **Rules and Regulations**

Unless otherwise provided for in your condominium documents, the Condominium Act authorizes the board to adopt reasonable rules and regulations pertaining to the use of the common elements, common areas, and recreational facilities of the association. The board has the authority to adopt a rule or regulation if it does not contravene either an express provision of the declaration or a right to reasonably infer therefrom. The standard for review of board-made rules and regulations is whether the rule or regulation is reasonably related to the promotion of the health, happiness, and peace of mind of all unit owners. Once adopted, rules and regulations must be uniformly applied. Unequal and arbitrary enforcement of a rule or regulation may result in the board being barred from enforcing the rule or regulation. The method for adopting the rules and regulations should be stated in the bylaws.

### **AMENDING DOCUMENTS**

Statutory/Rule References

Amending Bylaws	718.112(2)(h), F.S.
Amending Declaration	718.110, F.S.
Amendments by Developer	718.504, F.S. Rule 61B-17.006, F.A.C.

The statutory methods for amending the declaration of condominium and the bylaws of the association are similar. The method for amending the declaration is stated in Section 718.110, F.S., and the method for amending the bylaws is found in Section 718.112(2)(h), F.S.

### **Vote Required to Amend the Declaration of Condominium**

If the declaration of condominium for an association contains provisions for amendment, those provisions are to be followed. However, Section 718.110, F.S., states that if the declaration fails to provide a method of amendment, the declaration

may be amended by the approval of two-thirds of the voting interests, with two exceptions:

1. The first exception involves amendments that will change the configuration or size of any condominium 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 and owns the common surplus. Unless otherwise provided in the declaration as it was originally recorded, these amendments shall require the approval of the record owner and lien holders of record of the unit and all owners of record of all other units. The acquisition of property by the association and material alterations or substantial additions to association property and common elements in accordance with Section 718.111(7), F.S., or Section 718.113, F.S., are not considered material alterations or modifications to the appurtenances to the unit.
2. The second exception concerns time-share estates. Unless otherwise provided in the declaration as originally recorded, amendments to the declaration that would permit time-share estates to be created in any unit of the condominium require the approval of the record owner of each unit of the condominium and record owners of liens on each unit of the condominium.

Notwithstanding these two exceptions, a declaration of condominium that is recorded in the county records after April 1, 1992, shall not require that amendments be approved by more than four-fifths of the voting interests.

The above section pertains to amendments to the declaration of condominium once the unit owners are in control of the association. It is important to note, however, that the developer can also make amendments to the declaration. The declaration will specify the vote that is needed to do so. All amendments by the developer (as well as by unit owners other than the developer) must be recorded in the public records of the county where the declaration is recorded.

### **Vote Required to Amend Association Bylaws**

In order to amend the bylaws of your association, you should first check to see if a method is provided in them. If there are no procedures provided to amend the bylaws, Chapter 718, F.S., addresses this situation. Section 718.112(2)(h), F.S., states that if the bylaws fail to provide a method of amendment, the bylaws may be amended by the approval of two-thirds of the voting interests.

### **Procedure for Amending Documents**

There is a certain procedure that must be followed when amending the documents. No provision of the declaration or the bylaws shall be revised or amended by reference to its title or number only. Proposed amendments to existing provisions must contain the full text of the provision being amended. New words must be inserted in the text and underlined and words that are being deleted must be lined through with hyphens. If the changes are so extensive that this procedure would not

be effective (i.e., the language would become too confusing to read or comprehend), a notation must be inserted immediately preceding the proposed amendment in substantially the following language: “Substantial rewording of declaration [bylaw]. See provision [bylaw] for present text.” All amendments must be recorded in the public records of the county where the declaration is recorded in order to be effective.

Below is an example of an amendment that does not require substantial rewording and therefore would follow the strike-through and underline procedure:

## SECTION 6. ADDITIONS, ALTERATIONS, OR IMPROVEMENTS BY THE ASSOCIATION

Whenever, in the judgment of the Board of Directors, the common elements, or any part thereof, shall require capital additions, alterations, or improvements (as distinguished from maintenance, repairs, and replacements) costing in excess of ~~Five Thousand Dollars (\$5,000)~~ Ten Thousand Dollars (\$10,000) in the aggregate in any calendar year, the Association may proceed with such additions, alterations, or improvements only if the making of such additions, alterations, or improvements has been approved by the owners of ~~a majority~~ two-thirds (2/3) of the total voting interests voting in person or by limited proxy at a duly called meeting of the association. Any such additions, alterations, or improvements to such common elements, or any part thereof, costing in the aggregate ~~Five Thousand Dollars (\$5,000)~~ Ten Thousand Dollars (\$10,000) or less in a calendar year may be made by the Board of Directors without approval of the unit owners. The cost and expense of any such additions, alterations, or improvements to such common elements shall be incurred as a special assessment of the unit owners pursuant to Section 11.5 of this declaration.

### COMMON ELEMENTS

#### Statutory References

Common Elements, Defined	718.103(8), F.S. 718.108, F.S.
Limited Common Elements	718.103(19), F.S.
Maintenance Responsibility	718.113(1), F.S.

By statutory definition, a condominium is made up of two types of property ownership— the unit which is owned exclusively by one or more persons, and the common elements which are owned jointly by all unit owners. Because of this joint ownership characteristic, the administrative and maintenance responsibilities for the common elements are placed upon the association. The board of directors is the representative body responsible for administrating the affairs of the association; therefore, the duty to maintain the common elements falls upon the board members. To accomplish this function, the board must be able to identify the common elements and its specific areas of responsibility.

## Identifying Common Elements

Common elements are those portions of the condominium property which are not included in the units. All unit owners share ownership of the common elements in an undivided manner. The structure of the building including the roof, walls, conduit and hallways, and recreation facilities are examples of items that are usually part of the common elements. Common elements are legally attached to each unit and are transferred with the unit when it is sold.

While all unit owners have the right to use the common elements, they must use them in the manner provided in the condominium documents and in the rules and regulations adopted by the board of directors of the association. Typical restrictions on the use of the common elements include limitations on parking and types of vehicles allowed on the premises, limitations on modifications to the condominium exterior, and restrictions on the use of recreational and other common facilities.

Section 718.103(8), F.S., identifies common elements as the portions of the condominium property which are not included in the units. This definition of common elements is expanded upon in Section 718.108, F.S. This section states as follows:

- 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.

The declaration of condominium will describe all property which makes up the common elements.



## Identifying Limited Common Elements

The declaration will also describe limited common elements if any exist. The definition of limited common elements found in Section 718.103(19), F.S., is those common elements which are reserved for the use of a certain condominium or units to the exclusion of other units, as specified in the declaration of condominium. They exist only if the declaration of condominium specifically provides for them. The following is an example of a provision in a declaration of condominium providing for limited common elements.

### EXAMPLE

1. Those portions of the common elements reserved for the use of certain unit owners or a certain unit owner, to the exclusion of other unit owners, are deemed limited common elements.
2. All the catwalks on the building which are used for ingress and egress to all of the units located on each floor are and shall remain a part of the common elements.
3. The balconies and terraces shown and graphically described in the Floor Plans and Plot Plan are limited common elements appurtenant to each of the condominium units as shown. These limited common elements are reserved for the use of the condominium unit appurtenant thereto, to the exclusion of other condominium units and there shall pass with each unit, as appurtenant thereto, the exclusive right to use the limited common elements so appurtenant.
4. The association shall maintain these limited common elements; and, the expenses of maintenance and repair relating to the limited common elements referred to in the Article shall be borne and assessed against all individual unit owners as common expenses.

The example provides important information to guide the board of directors in administering and maintaining the common elements. A member of the board who reads this provision, together with the floor plans and plot plans, will be able to determine (1) the specific portions of the common elements which are limited common elements; (2) the unit owners who have the right to use the limited common elements; (3) the party responsible for ensuring that the limited common elements are properly maintained and; (4) the party responsible for the expenses associated with the maintenance of the limited common elements.

Examples of property which are usually defined in the documents as common elements include halls, land on which the buildings are located, elevators, parking areas, roofs, and recreational facilities. It is impossible, however, to identify common elements and limited common elements without reading the declaration of condominium.

## USE RIGHTS AND FEES

Statutory References	
Inviting Public Officers/Candidates	718.123, F.S.
Peaceably Assemble	718.123, F.S.
Rights Acquired as Unit Owner	718.106, F.S.
Rules Regarding Common Elements	718.112(3), F.S. 718.123, F.S.
Use Fees	718.111(4), F.S.
Display of Flag	718.113 (4), F.S.

When title to a condominium unit is obtained, an undivided share in the common elements and common surplus is automatically acquired. Also included in the purchase of a condominium unit is the exclusive right to use such portions of the common elements as provided by the declaration. The association has the power to make and collect assessments for the maintenance, repair, and replacement of common elements. However, the association may only charge a separate “use” fee for the common elements if (1) this is stated in the declaration, or (2) it is approved by a majority of the unit owners in the association, or (3) the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

The use of the common elements includes the right to peaceably assemble and to invite public officers or candidates for public office to appear and speak. The board may adopt reasonable rules regarding the use of the common elements, but these rules should (1) be in writing, and (2) be adopted in advance before being enforced. The association documents (specifically, the bylaws) should provide the method for adopting rules and regulations of the association. Board members must remember that the use of the common elements may not be denied or impaired due to delinquent assessments. In turn, unit owners must remember to use the common elements for their intended purposes and not hinder or encroach upon the lawful rights of other unit owners.

### Flag Display

Per 718.113 (4), F.S., 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 4<sup>1</sup>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.

For further information on condominium owner rights, a brochure prepared by the Department of Business and Professional Regulation – Condominium Unit-Owner Rights and Responsibilities – provides further information on unit owner rights. The document can be viewed and downloaded at <http://www.myflorida.com/dbpr/lsc/documents/uorr.pdf>

## **CONDOMINIUM OMBUDSMAN**

Statutory Reference

718.5012, F.S.

The Condominium Ombudsman acts as liaison between the Division of Florida Land Sales, Condominiums and Mobile Homes, unit owners, boards of directors, board members, community association managers, and other affected parties. The Ombudsman will act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

The ombudsman's objective is to 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's office will also monitor and review procedures and disputes concerning condominium elections or meetings. 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.

You can contact the Ombudsman through either of two locations; the main office in Tallahassee and a satellite office in Ft. Lauderdale. Should you wish to file a complaint, please visit

<http://www.myflorida.com/dbpr/lsc/LSCMHCondominiumsOmbudsmanComplaint.html>

### TALLAHASSEE OFFICE

1940 N. Monroe Street

Tallahassee, FL 32399

Tel.: (850) 922-7671

E-Mail: [Ombudsman@dbpr.state.fl.us](mailto:Ombudsman@dbpr.state.fl.us)

### FT. LAUDERDALE SATELLITE OFFICE

1400 W. Commercial Blvd.

Fort Lauderdale, FL 33309

Tel.: (954) 202-3234

## **CONDOMINIUM ADVISORY COUNCIL**

Statutory Reference

718.50151 F.S.

The Advisory Council on Condominiums was created by the Division of Land Sales, Condominiums and Mobile Homes to enhance communication between the Division and the condominium community. The functions of the Council as stated in the Condominium Act are as follows:

- To receive input and recommendations from the public regarding issues of concern and any changes to be made in the condominium law;

- To review, evaluate, and advise the Division regarding the adoption of rules affecting condominiums; and
- To recommend improvements in the education programs offered by the Division.

The Advisory Council on Condominiums holds independent meetings at various times during the year throughout the state. All of the meetings are open to the public. For more information, visit the web at

<http://www.myflorida.com/dbpr/lsc/LSCMHCondominiumAdvisoryCouncil.html>

## DEFINITION OF DEVELOPER

Defines “developer” as it relates to the following sections:	Rule 61B-15.007, F.A.C.
Sales or Reservation Deposits Prior to Closing	718.202, F.S.
Filing Prior to Sale or Lease	718.502, F.S.
Developer Disclosure Prior to Sale; Non-Developer	
Unit Owner Disclosure Prior to Sale; Voidability	718.503, F.S.
Prospectus or Offering Circular	718.504, F.S.

When used in the sections cited above, a developer is any person (natural, corporation, partnership, and any other legal entity) who:

- Creates a condominium OR offers condominium parcels for sale or lease in the ordinary course of business (*creating developer*);
- Succeeds to the interests of a developer by sale, lease, assignment, foreclosure of a mortgage or other transfer, and who offers condominium parcels for sale or lease in the ordinary course of business (*successor or subsequent developer*); or
- Acts concurrently with a developer in selling or leasing condominium parcels in the ordinary course of business (*concurrent developer*)

A person is considered to be offering condominium parcels for sale or lease “in the ordinary course of business” if:

- The condominium is comprised of 70 or more units and the person offers more than 7 units in the condominium within a period of one year;
- The condominium is comprised of less than 70 units and the person offers more than 5 units in the condominium within a period of one year;
- The person participates in a common promotional plan that offers more than 7 units within a period of one 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. An example of a common promotional plan would be if an individual was promoting condominium units in several

different associations using only one plan, hence a *common plan* to promote different units. The administrative rules clarify that a person who has simply provided financial contributions or professional or brokerage services is not deemed to have participated in a plan.

## **TURNOVER**

Statutory/Rule Reference:

Agreements Entered Into by Developer  
Transfer of Association Control

718.302., F.S.

718.301, F.S.

Rule 61 B-23.003, F.A.C.

Transition From Developer Control

Rule 61B-23.003(9), F.A.C.

Turnover Audit Requirements

Rule 61 B-22.0062, F.A.C.

## **Developer Control**

When a condominium association is originally established, the developer of the condominium is solely responsible for the day-to-day activities of running the association. Since the association is controlled by an elected board of administration, the developer initially elects all of the board members. Initially the developer “controls” the association. During the time that the developer controls the association, any violations of the Condominium Act or administrative rules by the association are the responsibility of the developer.

## **Non-Developer Representation**

The Condominium Act provides that when unit owners other than the developer own certain percentages of the units in the condominium association, the non-developer unit owners are entitled to representation on the board of directors. Section 718.301, F.S., and Rule 61 B-23.003(7), F.A.C., provide that when unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated by an association, the non-developer unit owners are entitled to elect at least one-third of the members of the association’s board of administration. When an association will operate more than one condominium, unit owners other than the developer are entitled to elect at least one-third of the members of the board when they own 15 percent of the units in any one condominium to be operated by the association.

The association must give at least 60 days notice for the election of the non-developer member(s) of the board of administration. Any unit owner may give notice of the election if the association fails to do so. The election must take place within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration. The election is to be conducted following the guidelines in 718.112(2)(d)3., F.S., and Rule 61B-23-0021, F.A.C. The developer is required to forward to the Division of Florida Land Sales, Condominiums, and Mobile Homes the name and mailing address of the first non-developer unit owner elected to the board.

## **Non-Developer Control**

The Condominium Act contains specific provisions relating to the control of the association shifting from the developer to unit owners other than the developer. There are several sections of the Condominium Act that address issues such as electing non-developer unit owners and turning over documents. For the purpose of this section of the manual, “transfer of control” or “turnover” refers to the election at which non-developer unit owners elect a majority of the directors. The non-developer unit owners assume the responsibility for operating the condominium and making decisions on behalf of the association at the time of turnover.

Pursuant to 718.301(4), F.S., the transfer of association control is not an option. It is a requirement that the developer turn over control and the non-developer unit owners accept control once certain criteria have been met. Turning over control of the association does not relieve the developer of his or her statutory obligations. The developer simply is no longer the sole decision-maker regarding the operation of the association. Once turnover has occurred, the non-developer unit owners will “control” the association.

## **When Does Turnover Occur?**

Unit owners are entitled to elect at least a majority of the members of the board of administration of an association when one of the following first occurs:

- 3 years after 50% of the units that will be operated ultimately by the association have been conveyed to purchasers;
- 3 months after 90% of the units that will be operated ultimately by the association have been conveyed to purchasers;
- 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;
- 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; or,
- 7 years after the declaration of condominium is recorded; or in the case of an association which may ultimately operate more than one condominium, 7 years after the first declaration is recorded; or in the case of an association operating a phase condominium created pursuant to 718.403, F.S., 7 years after the declaration creating the initial phase is recorded. This paragraph applies only to condominiums created after January 1, 1992.

The developer may establish committees to involve the unit owners in the operation of the condominium prior to turnover. The establishment of committees does not relieve the developer from any obligations under 718.301, F.S. (For more information, see subheading entitled “Developer Rights and Responsibilities Concerning Turnover”, page 48.

### **Determining Percentages of Units Conveyed to Non-Developer Unit Owners**

For the purposes of determining the percentages of units owned by non-developer unit owners, associations must first consider whether there has been a bulk transfer of units and if an assignment of developer rights has been granted in conjunction with the bulk transfer. A **bulk transfer** means any sale or other transfer of two or more units in one condominium from the current developer 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. An assignment of developer rights refers to a written agreement whereby the current developer expressly transfers to a new developer all of the rights and existing obligations under the association's documents, the Condominium Act, and the administrative rules.

Units sold or transferred in a bulk transfer are to be considered in figuring the percentage of units owned by non-developer unit owners. However, if an assignment of developer rights has been given in conjunction with the bulk transfer, the units are not to be considered because the assignment of rights simply transfers the current developer's units to a new developer and the new developer takes on the responsibilities of the operation of the association.

### **Voting Rights of a Unit Owner Who Purchases Units in a Bulk Transfer**

If assignment of developer rights has not been given, and the new owner *does not become a developer* as defined in the administrative rules, then the new owner is entitled to vote as any other unit owner. If the new owner does not receive an assignment of developer rights *and becomes a developer* (refer to page II-23) as defined in the administrative rules, the new owner is entitled to vote as any other unit owner so long as the new owner is offering units for sale. If the new owner ceases offering units for sale or does not engage in offering units for sale at all, then the new owner is not entitled to vote for a majority of the members of the board. Associations must refer to the Condominium Act, the administrative rules, and the provisions of the bulk transfer when determining the applicability of this section.

### **Developer Rights and Responsibilities Concerning Turnover**

The developer is entitled to elect at least one member of the board of directors of an association as long as the developer holds for sale (in the ordinary course of business) at least 5 percent of the units in condominiums with fewer than 500 units, and 2 percent of the units in condominiums with more than 500 units.

If the developer holds units for sale in the ordinary course of business, the developer's written approval is needed prior to either of the following occurring:

- Assessing the developer as a unit owner for capital improvements; or,
- Any action by the association that would be detrimental to the sales of units by the developer. (An increase in assessments for common expenses without discrimination against the developer is not deemed to be detrimental to the

sales of units. For example, an association increasing each unit's monthly assessments from \$250 to \$275 would not be considered detrimental to the sales of units.)

Following turnover, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for the purpose of voting for a majority of the members of the board. The developer is also prohibited from voting on matters for which a vote of the non-developer unit owners is allowed or required by the Condominium Act or administrative rules.

### **Items Delivered To The Association By The Developer At Turnover**

At the time of turnover, the developer must at a minimum deliver to the association the applicable items listed below for each condominium operated by the association. All items must be delivered at the time of turnover with the exception of the financial records of the association, which must be delivered within 90 days after the date of the meeting at which the turnover occurred. The developer must pay the costs for the preparation and duplication of the documents required, including the costs and certified public accountant's fees incurred in preparing the financial statements.

- The original or a photocopy of the recorded declaration of condominium and all amendments. If a photocopy is provided, it shall be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.
- 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.
- A copy of the bylaws.
- The minute books, including all minutes, and other books and records of the association, if any.
- Any house rules and regulations which have been promulgated.
- Resignations of officers and members of the board of directors who are required to resign because the developer is required to relinquish control of the association.
- The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited 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 shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the 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.

- Association funds or control over the funds.
- 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.
- 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.
- A list of the names and addresses, of which the developer had knowledge at any time in the development of the condominium, 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.
- Insurance policies.
- Copies of any certificates of occupancy issued for the condominium property.
- 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 take control of the association.
- All written warranties in effect.
- A roster of unit owners and their addresses and telephone numbers, if known.
- Leases of the common elements and other leases to which the association is a party.
- 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.
- All other contracts to which the association is a party.

The developer is required to obtain a receipt for transfer of the documents from the unit owner-controlled association. The receipt must include a list of all the items required for each condominium, the date of the transfer, and the receipt must be signed by both the developer and a non-developer unit owner board member. A copy of the completed receipt is to be maintained by both parties. To view a sample of a receipt for document transfer, see page 182.

## **Turnover Audit Requirements**

The audit required at the time of turnover applies to all turnovers that occur on or after April 1, 1992. The turnover audit must cover the period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit, if an audit has been performed for all fiscal periods, and ending with the date of turnover. The financial statements, notes, or supplementary information must reflect revenues and expenses for each fiscal year and any interim periods included in the audit. The notes must contain:

- A statement that the financial statements were prepared pursuant to Section 718.301(4)(c), Florida Statutes;
- A statement of total cash payments made by the developer to the association;
- If the developer 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,
- 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.

## **Agreements Entered Into By The Developer**

Grants or reservations made by a declaration, lease, or other document, or contracts for operation, maintenance, or management services entered into by the developer prior to turnover may be cancelled by a vote of the non-developer unit owners as described in the following sections. The association should seek the advice of competent legal counsel if it is considering canceling a contract.

### **One condominium/one association**

If turnover has occurred, or if turnover has not occurred but 75% of the units are owned by non-developer unit owners, the contract may be cancelled by the concurrence of not less than 75% of the non-developer voting interests. For example: 100 unit association, 80 units have been sold to non-developer unit owners. To cancel a contract entered into by

the developer, at least 75% of the 80 non-developer-owned voting interests (at least 60 units) must agree to cancel the contract.

**More than one condominium/turnover not yet occurred**

If at least 75% of the voting interests in a condominium are owned by non-developer unit owners, and the contract, grant, or reservation covers only the units in that condominium, cancellation may be at least 75% of the non-developer voting interests in that condominium.

EXAMPLE: Condominium “A” has 100 units and is part of a multi-condominium with 300 total units, 100 units per condominium, but only one association. Turnover has not yet occurred, but 80 units (80%) in Condominium “A” have been purchased by non-developer unit owners. A contract entered into by the developer covering only the laundry facilities in Condominium “A,” and affecting only the unit owners in Condominium “A,” may be cancelled by concurrence of 75% of the 80 non-developer owned units in Condominium “A.”

**More than one condominium/turnover has occurred**

Cancellations may be by concurrence of 75% of the total number of non-developer voting interests in all condominiums operated by the association.

EXAMPLE: Three condominiums, 100 units each, 252 have been sold to non-developer unit owners. The developer had a contract with a vending company to provide snack machines for the clubhouse, which is part of the common elements used by all unit owners. Since turnover has occurred in this association, 75% of the total non-developer voting interests in the association may vote to cancel this contract (75% of 252 = 189), regardless of the percentage of units owned by non-developer owners in each condominium.

**More than one condominium/ more than one association**

If the unit owners have rights to use property in common with unit owners from other condominiums and those condominiums are operated by more than one association, only after all the associations have turned over control to the unit owners may at least 75% of the non-developer voting interests in all the condominiums approve a cancellation.

EXAMPLE: The condominiums, three associations. All three associations would have to turn over control prior to voting to cancel a contract entered into by the developer. After turnover has been completed by all three associations, 75% of the total non-developer voting interests may vote to cancel a contract.

**COMMUNITY ASSOCIATION MANAGEMENT**

Statutory Reference

Chapter 468, Part VIII, F.S.

Although the Condominium Act does not *require* any condominium association to do so, many condominium associations choose to contract with an outside individual or management company. However, if an association chooses to hire a manager to assist the board of directors, that person may be required to be licensed as a Community Association Manager, (CAM) under Part VIII, Chapter 468 of the Florida Statutes, known as the Community Association Management Law. This law is administered by the Division of Professions. The hiring of a manager to administer the day-to-day operational functions of an association does not relieve the board from the responsibility to ensure the association complies with the Condominium Act and the Division's administrative rules.

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

Generally, contracted professional management companies offer the following services:

- attend board and membership meetings; receive, record, and resolve complaints according to policies established by the board of directors;
- handle personnel matters of the management staff, including hiring, supervising, paying staff, and filing necessary reports and forms;
- maintain an inventory of association property and equipment; and provide regular inspections to determine conditions and maintenance needs;
- collect assessments, bill owners, delinquency follow-up and notification to the board of directors; send violation notices to residents;
- maintain association books and records and prepare financial statements when required; disburse funds for normal and recurring expenses and make other expenditures as directed by the board;
- prepare a proposed operating budget; contract for utilities and other services; purchase equipment and supplies; and maintain the common areas and facilities;
- obtain and maintain insurance information and making recommendations to the board of directors; and report insurance claims.

It is important for the management firm to know all limitations stated in the association's documents. When evaluating management firms, consider the following factors:

- Experience – The firm should be familiar with the concept of homeowner or condominium association management. Determine how long the firm has been working with associations, how many associations similar to yours it currently manages, and how many units this includes. Make sure the firm's personnel are knowledgeable about the Florida Statute 718 (Condominium Act);
- Services – Determine whether the firm offers the services your association needs. If any services are subcontracted (grounds and pool maintenance, accounting, etc.), discuss the expected standard of maintenance;
- Reputation – Ask for and check references about the firm's past performance with associations similar to yours. Investigate through professional associations,

the police, the Better Business Bureau, and state and local consumer affairs agencies whether a management company or any of its officers, has ever been convicted of a crime, and whether the company's insurance bond has ever paid for dishonesty, act of negligence, or other inappropriate or criminal action. Investigate any consumer complaints filed against a company, including how the complaint was resolved;

- Professional Affiliation – Check to see if the firm belongs to one or more professional property management organizations such as the Community Associations Institute, the Property Management Association, or the Institute of Real Estate Management;
- Procedures and Systems – Ask the firm to describe the accounting system that will be used, the collection of delinquent assessments, maintenance schedules, purchasing, and billing procedures. Determine if they are compatible with the association's policy and procedures;
- Personnel – Determine the number of persons to work with your community, what training they have had, how long they have been with the firm, and that the staff is bonded;
- Accessibility – How does the firm handle after-hours emergencies?
- Financial Stability – Check the firm's credit rating, insurance and bank references, and check with vendors and suppliers to learn how promptly the firm pays its bills;
- Compensation – Determine how the management fee is computed. Is the fee based on a package of services, extra charges, and separate charge for each service? Does the fee include attendance at board of director meetings and other after-hours obligations?

For information concerning licensure and regulation of community association managers, call (800) 487-1395 or visit the DBPR's website at <http://www.myfloridalicense.com/dbpr/index.html>

## **DISASTER PLANNING**

Material from "Preparing For a Disaster", prepared by The Department of Community Affairs, Division of Emergency Management, is presented here for your convenience. To view and download the entire document, please visit <http://www.myflorida.com/dbpr/lsc/documents/disaster.pdf>

## **Guidelines for Condominium Associations**

### ***INTRODUCTION***

A written disaster plan is a valuable piece of information that enables your association to respond effectively to emergencies. Furthermore, the plan provides a permanent record of decisions and acquired knowledge, thus eliminating dependence on individuals who may later move away from the association or who may no longer be employed by the association. While the plan will not immunize your association from

disasters, it will affect the outcome of emergency situations by reducing the amount of lost lives and property.

The first step in preparing a disaster plan is to review the condominium documents. The documents may either assist or hinder the effectiveness of a disaster plan. The following issues are addressed in the Condominium Act, and are presented to assist in preparing a disaster plan.

### **The Planning Role of the Condominium Association**

Under the Condominium Act, the role of the condominium association is to operate the condominium for the health, safety, comfort, and general welfare of the unit owners. Along with the statutory powers granted to the board of directors is the implied responsibility to protect their employees, equipment, supplies, facilities, and unit owners from disaster events that threaten them. Toward this end, an emergency/disaster response and recovery plan is warranted. The plan should contain the procedures and provisions that the association would rely upon to protect employees, unit owners, and other resources during disaster/emergency situations.

The plan will define how the association will accomplish the necessary actions to protect employees, unit owners, equipment, supplies, property, and facilities. It should include emergency telephone numbers, call down rosters, resources listings, maps, and charts, etc. The plan should include step-by-step procedures for cooperation with local governmental officials (i.e., emergency management officials) to (1) notify/warn all affected persons, (2) evacuate affected persons from association facilities, (3) provide adequate shelter on site or in public shelter (if approved by emergency management officials), (4) obtain mutual aid from other associations, businesses, etc., (5) report situations and request assistance from local emergency management officials, and (6) communicate with employees and personnel who are working at different facilities.

### **The Planning Process**

The emergency/disaster response and recovery plan should be developed from a “planning process” that includes participation from all affected parties. The planning process should detail how the plan was developed. The first step should be to establish a working relationship with local emergency management officials to determine what the local disaster threats are and what the local community is doing to prepare itself. Once this first step is taken, the following planning process steps are recommended:

#### **1. Research**

Establish the situation base under which planning is to be accomplished. You cannot plan in a vacuum but must develop an in-depth knowledge of your community and association facilities prior to actual plan development. This is accomplished through collecting, analyzing, and applying data.

- Review Existing Plans and Procedures – Before doing any planning, review existing plans, action checklists, vulnerability analysis, etc., to determine where there are deficiencies, if any. Don’t reinvent the wheel.

- Vulnerability Analysis – The plan must be responsive to the hazards that may threaten the association. It is not sufficient to merely identify the hazards; you also should analyze the potential impact of these hazards on the Association.
- Identify Existing Resources – Compile the resources (both equipment and people) that the association has for meeting emergency situation requirements to help develop operational concepts.
- Capability Assessment – Assess the association’s capability to adequately protect its employees, unit owners, equipment, and facilities by measuring available resources and levels of training and disaster response experience against the potential needs as determined by the vulnerability analysis.

### Planning Environment

- Demographics – How many employees does the association have? How many association operating locations? What kind of access does the association have to the public transportation network? What kind of barriers (rivers, roads, bridges, etc.) could impact on movement to/from locations?
- Resource Requirements – Examine resource deficiencies (people, equipment, etc.), and identify areas (financing, warning systems, etc.) which should be upgraded or changed to fit emergency response needs.
- Determine disaster preparedness needs relative to association vulnerability and available assets.
- Identify disaster-related issues that the association is likely to encounter due to the uniqueness of the condominium form of ownership.

### Plan Development

With a solid base of information upon which to work, the individual(s) responsible for the plan should be ready to write the plan. At this stage, the planner should have a good idea of the specific activities that will need to be addressed in the plan and should have a sound concept of the procedures that need to be developed to protect employees and unit owners (warning/evacuation/sheltering), equipment (securing and dispersal), and facilities (taping/boarding of windows, sandbagging entrances, shutting down production, etc.) from the hazards that may threaten the association. Further, plan development should rely upon a team approach. That is: key service, department, and organization chiefs should be involved. Once you have completed the first draft, coordinate it with each division and department in the association. Also, ask the local emergency management officials to review it.

Possibly the most important and most often overlooked task associated with plan development is coordination. Coordination implies cooperation and a willingness to share responsibility and a desire to solicit the input and constructive criticism of others. Print and distribute the plan in sufficient numbers to meet the needs of the association. Also, provide copies to the local emergency management agency and, where appropriate, to the local service agencies, i.e., police, fire, public works, etc. Review/update the plan annually as major changes occur.

## Hazard Analysis

To determine the emergency need of any community, knowledge of the types of hazards that might and do exist in that community is essential. Hazards that may affect condominiums in Collier County will vary from location to location. For example, condominiums located in low-lying coastal areas are susceptible to wind and tidal surges, while those located inland are susceptible to wind as well as rain-induced flooding. Whatever the location, the basics of hazard analysis for the Association should include:

- Review of potential hazards.
- Identification of vulnerability.
- Identification of other factors which may compound the susceptibility of the Association to particular hazards, (i.e., inadequate flood drainage, seaward of the duneline, etc.)
- Identification of potential obstacles to evacuation (i.e., bridges, railroad crossings, low causeway approaches, etc.)
- Estimation of hazard impact on the association to determine the building's structural adequacy. Local insurance adjusters or construction engineers could do building and site evaluation.

## Emergency Needs

After estimates have been made of potential hazard impacts on the association, the estimates must be translated into specific emergency programs or activities. Where the hazard analysis pointed out special problems, an organized preparedness and response effort by the association is needed.

The following questions will assist you in determining emergency needs:

- What are the characteristics of the people who live in the Association? Elderly or young? Seasonal or permanent residents?
- How many residents will require special assistance due to age, medical conditions, etc.?
- Are there cultural or ethnic groups which might have special needs?
- What preparations have been made to use the association as emergency shelter (i.e., sanitation, food, security, etc.)?
- What hazards will require your association to be evacuated?
- Is the association located on a barrier island accessible only by causeway? If so, are approaches to any causeways easily flooded?
- Does every resident know the location of the nearest public shelter and best route to the shelter?
- What is the attitude of association unit owners about various hazards such as hurricanes?
- What is the effect of a power outage on the primary means of communication and building evacuation (no elevator power)?
- Does the Association have a large amount of glass surface susceptible to high winds and flying debris?
- Will major roadways become overcrowded during emergency evacuation?
- Does your association have an emergency power source?



- If the association is inland out of a surge zone, is there a well-constructed building and safe "common" area or clubhouse that could be used as a shelter?

The extent to which answers to the above questions indicate potential problems will determine the emergency needs of the Association. Special programs of warning, evacuation, disaster awareness, or sheltering might be required. In summary, emergency needs:

- Let you know what to expect
- Prevent planning down blind alleys
- Give you an incentive
- May indicate where preventative measures should be taken
- Create awareness of new hazards
- Identify the commitment the Association will require
- Indicate the type of help the Association will need

## **Association Disaster Plan**

The planning group or committee is the "traditional" vehicle from which citizen group disaster plans emerge. The key is that individuals who will be involved in emergency response are also involved in the planning for that response.

### **Recommended make-up of committee for the association disaster plan**

- Representative of the Board of Directors
- Floor or building representative(s)
- Association management representative
- Local emergency management official
- Fire department official
- Volunteer relief organization official
- Insurance representative
- Health department official
- Law enforcement representative
- Others as needed

Because planning starts with knowing the association's problems, the disaster committee should be involved in gathering the information discussed in the preceding sections. Next, the committee decides what type of plan would be most appropriate for the disaster needs of the association.

## **Telephone Rosters**

Telephone rosters are the simplest type of plans and this may be all that is needed by the association if local mechanisms to cope with potential hazards are in place. All you have to know is who to call to take care of particular emergencies. Compile a current telephone list of all names, addresses, and phone numbers for Board of Directors, management, and maintenance personnel, concessionaires, and emergency service

agencies. The list may also include organizations involved in counseling and advocacy, referral, legal assistance, debris removal, and volunteer activities.

If you elect to go with this simplest of plans, you also might want to back it up with a resource list so you will know what is available, as well as who to call. An inventory of association-owned supplies (i.e., vans, trucks, walkie-talkies, auxiliary generators, fire extinguishers, etc.) should be compiled and frequently updated. Unit owners with special skills (i.e., physicians, nurses, architects, and equipment operators) should be listed in the resource list to provide assistance during emergencies. Under disaster conditions, telephones – both landline and cell phones - may be inoperative, so even the simplest of plans should have alternate communication systems to back them up. Therefore, the committee should consider using HAM or CB radios to supplement the primary system.

### **Action Guides/Checklists**

Action guides and checklists are short (one/two page) sheets or cards designed to ensure that those responding to emergencies do a few basic things. For example, a hurricane action guide for the association may specify the following:

- Start each hurricane season with a hurricane awareness program
- Rehearse hurricane evacuation plan
- Provide for monitoring of NOAA Weather Radio
- Establish guidelines for the safe storage of cars and boats
- Check emergency power system and other emergency supplies

Action guides and checklists may also be developed for other hazards such as fire and hazardous materials spills.

### **Coordinating Plans**

A coordinating plan is generally aimed at defining the responsibilities of various groups or individuals under various emergency conditions. This type of plan is more comprehensive than the two previously discussed, and may include the following elements:

- Authorities or Legal backing
- Disaster classification
- Organization for emergency response
- Responsibilities
- Maps and floor plans
- Other supporting information

The decision to implement a coordinating plan will depend on the vulnerability of the association, the adequacy of plans of local agencies to deal with potential hazards, the attitude of the members of the association with regard to specific hazards, and the resources of the association.

## **Preparing For the Disaster**

While there is little that can be done to prevent a disaster from occurring, there are steps that can be taken prior to an emergency that will speed up the relief and recovery efforts.

### **Inventory of Association Documents**

Responding to a disaster will be delayed if documents essential to the decision making contain unworkable restrictions. For example, the declaration of condominium may provide for automatic termination of the condominium in the event the condominium becomes uninhabitable unless two-thirds of the voting interests vote to rebuild. In the aftermath of a disaster it is difficult to locate a sufficient number of members to hold a meeting in order to carry out the vote. If the documents require the appointment of an insurance trustee, and the association is unable to find a trustee, the association may find that insurers are unwilling to turn over insurance proceeds to the association. You should periodically review the condominium documents with your association attorney in order to ensure that your documents are up to date and will not encumber a recovery from a disaster.

### **Protecting Association Documents**

Copies of the association documents and/or a summary of pertinent provisions should be maintained at a second location away from the community. Among the documents that should be maintained are:

- Articles of Incorporation of the association;
- Declaration of Condominium;
- Association By-Laws;
- Rules and Regulations;
- Amendments to the aforesaid items;
- Insurance Policies
- Construction Plans:
  1. Architectural Plans and Specifications,
  2. Engineering/Civil,
  3. Engineering/Structural and Mechanical,
  4. As-built drawings;
- Owner Roster:
  1. Record title owners,
  2. Emergency contact information,
- Bank Accounts, along with a list of authorized signatures;
- Contracts: Maintenance and Operation

All contracts should address cancellation in the event of the destruction of a community.

- Employee Information:
  1. Full Name,
  2. Date of Birth,
  3. Social Security Number,

4. Person to notify in event of an emergency.

### **Video/Photographic Records**

In addition to maintaining the information listed above, the association should create either a video or photographic record of the community and maintain a copy of the record off-site. All of these records should be updated periodically.

### **Communications Coordinator**

Many communities are evacuated prior to a disaster. The association should identify person(s) to serve as a communications coordinator. The name, address, and phone number of this person should be provided to every owner so that, in the event of a disaster, when the ability to communicate with other owners or the board is disrupted, the communications coordinator can facilitate communication among residents of the community. The designated person may be a professional engaged by the association for that purpose. Regardless, every officer and director should be instructed to contact the communications coordinator within a fixed time period after the disaster occurs to provide an address and phone number where they can be reached. Efforts should be made to locate all owners. Additionally, the board should designate a location from which they will function in the event of a disaster.

### **Survey the Property**

Depending on the nature and extent of the damage, it may be necessary to evacuate or shore-up a structure, obtain security to protect against criminal acts, and/or prevent further damage. Photograph or videotape the storm damage.

### **Contact Employees**

The communications coordinator should maintain a detailed list of all vital information and services utilized by the association. The coordinator should be provided with a list of all vendors, copies of all outstanding contracts, and a list of professionals employed by the association (accountants, attorneys, insurance agents, etc.), as well as necessary information, e.g., copies of bank accounts, location of all association funds, including CD's and/or other investments, insurance policies, and the names of the architect and engineer who designed the building. It may be necessary to suspend or cancel on-going contracts, such as pool and lawn services, following a disaster.

### **Post-Disaster Recovery**

The major ingredients for a speedy recovery following disasters are pre-disaster planning, availability of aid, public awareness, and community involvement. Recovery from widespread disaster sometimes presents serious challenges to public agencies in stricken communities. The demands on government relief organizations may be overwhelming and new problems may arise for which no authority or procedures are defined. Therefore, the association should anticipate as many contingencies as possible that may be encountered during recovery from disasters and have procedures in place to deal with them. The following is a brief description of disaster recovery issues and activities that the association should plan for.

## **Insurance**

Statutory Reference

718.111(11), F.S

The two basic types of coverage for unit owners are homeowners insurance and flood insurance. A homeowner's policy is the standard coverage most people have. It is written in several formats and only covers water damage if the wind opens the roof, windows, or some other parts of the building. The homeowners' policy does not cover damage caused by water rising to a point where it seeps in around doors, windows, etc. This type of damage is covered by flood insurance. Consequently, unit owners in flood hazardous areas participating in the National Flood Insurance Program should purchase flood insurance to cover potential flood damage.

The association should also maintain adequate insurance coverage on common elements and should purchase endorsements to some items normally not covered by the basic building insurance. Some of these exclusions, which are among those usually held in common by the association, are:

- Fences, property line walls, and seawalls
- Trees, shrubs or plants
- Outdoor equipment (i.e., TV antennas)
- Structures and other property located over water (i.e., piers)

The Board of Directors should review the association's documents for provisions relating to insurance and should inform unit owners about the form of insurance carried by the association. Unit owners should be advised to purchase additional coverage for personal property protection and for potential losses that may exceed the coverage purchased by the association. Unit owners should be instructed to keep policy numbers where they can be readily accessible in the event they must leave before an emergency/disaster situation or when reporting damages.

### **Obligations of the Association**

A unit owner-controlled association shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association. Developer-controlled associations shall exercise due diligence to obtain and maintain such insurance. Failure to obtain and maintain adequate insurance during any period of developer control shall constitute a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless said members can show that despite such failure, they have exercised due diligence.

The declaration of condominium as originally recorded or amended may require that condominium property consisting of freestanding buildings where there is 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. Adequate insurance, regardless of any requirements in the declaration of condominium for coverage by the association for “full insurable value,” “replacement cost,” or the like, may include reasonable deductibles as determined by the board. An association or group of associations may self-insure against claims against the association, the association property, and the condominium property required to be insured by an association. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect a condominium building shall provide primary coverage for:

- All portions of the condominium property located outside the units;
- The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and
- All portions of the condominium property for which the declaration of condominium requires coverage by the association.

The following are excluded from the association’s responsibility for obtaining property or casualty insurance:

- all floor, wall, and ceiling coverings,
- electrical fixtures,
- appliances,
- air conditioner or heating equipment,
- 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 a unit and serve only one unit and
- all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Beginning on January 1, 2004, the association shall have authority to amend the declaration of condominium, without regard to any requirement for mortgagee approval of the amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this section.

Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the association that operates the condominium in

which such unit is located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in paragraph (b) shall be insured by the individual unit owner.

In addition, associations in flood-prone areas should become familiar with recent changes in the National Flood Insurance Program (NFIP). Some of the changes that went into effect in June 1982 are as follows:

- Deductibles on both building and content losses resulting from floods were raised from \$200 to \$500 each
- Eligible flood losses of jewelry, precious metals, art objects and similar items are now limited to \$250, down from the previous limit of \$500
- Replacement cost coverage is available only for primary unit owners; condominiums owned as second homes are covered for actual values only
- New buildings constructed over water or seaward of mean tide after October 1, 1982 are no longer eligible for flood insurance

Coastal Barrier and other protected areas are indicated on the Flood Insurance Rate Maps (FIRMS) with slash marks with the statement on the FIRM, "National Flood Insurance not sold in this area." Furthermore, effective October 1, 1983, structures built on coastal barriers designated as "undeveloped" no longer qualify for flood insurance. Additionally, while buildings that exist or are under construction by October 1983 deadline still qualify, flood insurance for these properties will be good for one claim only. For instance, if a condominium in an area designated as "undeveloped" is substantially damaged by a hurricane, a claim could be filed. However, if the condominium is rebuilt, it could not qualify for flood insurance the second time because it is considered new construction built after 1983. If the policy has a lapse in coverage, another policy can not be purchased. Additional information on flood insurance may be obtained from local insurance agents or by calling the National Flood Insurance Program (toll free 1-800-427-4661), or by contacting: Department of Community Affairs, Division of Emergency Management (National Flood Insurance Program), 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850) 413-9959.

## **Damage Documentation**

Timely disaster assistance to individuals and the entire community is based on information on property losses. Relief agencies will like to know the following:

- Amount and extent of property damage
- Number of people injured or killed
- Number of people needing food, clothing, shelter, medical, and other assistance
- Cost of replacing or repairing damaged property
- Losses covered by insurance

Associations can speed the assistance process by ensuring that the above data is collected quickly and accurately. Unit owners identified in the resource list (See XXX) as real estate brokers, insurance agents, construction engineers, etc. should be requested to assist in damage assessment and other information gathering activities. Also, a list of

absentee owners along with their insurance agents would be useful in contacting these individuals and in collecting information on losses.

### **Repair of Common Property**

Even though federal disaster grants are available for the repair of properties such as driveways, sidewalks, swimming pools, etc. owned by private non-profit organizations, condominium associations (albeit private and non-profit) are not eligible for the Small Business Administration (SBA) home disaster loan normally provided to individuals and businesses. Consequently, associations should work out alternative means of repairing damaged common properties before disaster strikes (i.e., insurance, dedication of roads to local governments, self-insurance, etc.).

### **Imposed Limits to Repair**

Following a disaster, structures located below the line of mean high water cannot be rebuilt without the permission of Florida's Division of Beaches and Shores in the Department of Environmental Protection. Sometimes the Division may establish a field office in a disaster area or co-locate with other relief agencies in the Disaster Assistance Center and may authorize emergency permits for repairs of structures (i.e., stairs, walkways, decks, patios, etc.) to prevent further damage. However, permits will not be issued in the field office to rebuild where destruction is complete, or to create new lands or permanent major or minor structures that did not exist prior to the disaster. Associations with property located in the areas under the jurisdiction of Florida's Division of Beaches and Shores should become familiar with the Division's procedures so that post-disaster repairs may be carried out without unnecessary delay.

### **Debris Removal**

Debris removal after a disaster could be a time-consuming unpleasant task; nevertheless, it is one chore that must be performed in order to get the association back to normal.

Procedures should be established to address the following:

- Contracting for debris removal on common property
- Record-keeping on the cost of debris removal
- Purchase of insurance coverage for debris removal

### **DOCUMENT PROVISIONS**

Insurance coverage and provisions should be adequately and clearly stated in the association's documents. Examples of insurance provisions the association may want to address in the documents include, but are not necessarily limited to, the following:

- Description of the condominium and association property that is and is not covered under the association's policy.
- Insurance Trustee — The board may have the option of designating an Insurance Trustee, which may be a bank, trust company, attorney, or other person or entity that receives insurance proceeds for the benefit of the unit owners and/or respective mortgagees.



- **Distribution of Proceeds** — Describes under what conditions and how insurance proceeds will be distributed to or for the benefit of the unit owners and/or mortgagees.
- **Reconstruction or Repair after Fire or Other Casualty** — Describes provisions for determining whether or not the damaged property is to be reconstructed or repaired and how expenses are to be funded. This may also include provisions for condemnation.
- **Termination** — Addresses the requirements for termination and what happens when the condominium is terminated.

## RESERVES

The board may elect to establish reserve accounts for use in the event of a disaster. The funds should be restricted to disaster repairs, emergency supplies, and to compensate for deductibles and possible insufficiencies in insurance proceeds.

### Additional Sources

Department of Community Affairs  
**Division of Emergency Management**  
 2555 Shumard Oak Boulevard  
 Tallahassee, Florida 32399-2100  
 Phone: (850) 413-9900

For additional information, visit the Florida Division of Emergency Management web site at <http://www.floridadisaster.org/index.asp>

If a natural disaster occurs, this agency activates an emergency operations center. It also can direct people to the appropriate agency for specific emergency questions.

## MEETINGS

### Statutory/Rule Preferences

Noticing Meetings	718.111 & 112
Electronic Transmission	Rule 61B-23.0029
Broadcast Notice	718.112 (2)(d) 2, F.S.
Annual Meeting	718.112 (2)(d), F.S.
Board Meeting	718.111 (1)(b), F.S. 718.112 (2)(c), F.S. Rule 61B-23.001, F.A.C. Rule 61B-23.002, F.A.C.
Budget Meeting	718.112 (2)(e), F.S.
Committee Meetings	718.112 (2)(c), F.S. Rule 61B-23.001, F.A.C.

	Rule 61B-23.002, F.A.C.
Minutes	718.111 (12)(a)6, F.S. Rule 61B-23.002, F.A.C.
Proxies	718.112 (2)(b), F.S.
Quorum/Voting Requirements	718.111, F.S. 718.112, F.S. Rule 61B-23.002, F.A.C.
Sunshine Laws	718.112(2)(c), F.S.
Unit Owner Meetings	718.112 (2)(d), F.S. Rule 61B-23.002, F.A.C.
Unit Owner Participation	718.112 (2)(c), F.S. Rule 61B-23.001, F.A.C. Rule 61B-23.002, F.A.C.

Each unit owner has the right to be informed and have a voice in the operation of the condominium. For this reason, Chapter 718, Florida Statutes, requires each condominium association to hold an annual meeting of its unit owners, provide adequate notice of meetings, allow unit owner participation at meetings, conduct elections, permit unit owner inspection of the official records of the association, and prepare and distribute a year-end financial report to the members. These are just some of the requirements that unit owners can expect to be fulfilled by an association's board of directors.

As with meetings of governmental bodies, the right to attend and speak at meetings is of little benefit to the governed if they do not know when or where the meetings are going to be held. While governmental entities normally advertise meetings through newspapers, association advertisement is generally handled through physical posting of the notice.

There are numerous statutory provisions relating to meetings of the unit owners and meetings of the board of directors. In most associations, decisions relating to the operation of the condominium, including policy matters, are made by the board of directors. When these decisions are made at board meetings, the meetings must be open to members of the association. Some decisions, however, require the approval of the unit owners. This section reviews the various statutory and administrative rule requirements which relate to board of directors meetings, committee meetings, and unit owner meetings.

For a table that outlines the minimum statutory requirements for condominium meetings, visit

[http://www.myflorida.com/dbpr/lsc/documents/meeting\\_requirements.pdf](http://www.myflorida.com/dbpr/lsc/documents/meeting_requirements.pdf)

## **Board of Directors Meetings**

### **Definition**

Rule 61B-23.001, Florida Administrative Code (F.A.C.), defines a board meeting as “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.” The Condominium Act requires that any time a quorum of the board is established for the purpose of conducting association business, the unit owners have the right to attend and participate in those meetings, with the exception of meetings where litigation is being discussed with the association’s attorney. This requirement provides unit owners the opportunity to be informed of decisions made by the board of directors.

### **Notice Requirements**

Section 718.112(2)(c), Florida Statutes (F.S.), states that adequate notice, which includes identification of agenda items, must be given for all board meetings, including meetings closed to unit owners where the association’s attorney is present for the purposes of providing legal advice concerning proposed or pending litigation. To view a sample Meeting Notice, see page 164. If regular assessments will be considered at the meeting, the notice must include a statement that assessments will be considered and the nature of the assessments. The notice must be posted conspicuously upon the condominium or association property at least 48 continuous hours in advance of the meeting, unless a legitimate emergency makes such notice impossible. The board must adopt a rule [designating a specific location](#) on the condominium or association property upon which all notices of board meetings shall be posted and notify each unit owner of this locale. If there is no condominium or association property upon which notices can be posted, notices of board meetings must be mailed, hand-delivered, or electronically transmitted to each unit owner at least 14 days before the meeting.

If the board is going to consider non-emergency special assessments or amendments to rules regarding unit use, a written notice must be mailed, hand-delivered, or electronically transmitted to each unit owner and posted conspicuously on the property at least 14 days prior to the meeting. The person providing the notice must execute an affidavit as evidence that the meeting requirements were met and the affidavit must be filed among the official records of the association.

For a summary of the minimum statutory requirements for condominium association meetings, please visit the DBPR web site at

[http://www.myflorida.com/dbpr/lsc/documents/meeting\\_requirements.pdf](http://www.myflorida.com/dbpr/lsc/documents/meeting_requirements.pdf)

### **Electronic noticing**

Electronic notice is defined as any form of communication not directly involving the physical transmission of paper, but which may be directly reproduced to paper in a

comprehensible and legible form. 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.

Use of electronic notice must be authorized in the association's by-laws. For electronic notice from an association to its members to be permissible, the member must consent in writing to the receipt of electronic notice. Such consent may be revoked at the discretion of the member. 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. Electronic notice addresses must be maintained among the official records of the association, and are to be removed from the official records when permission to receive electronic notice is revoked by the member.

Electronic noticing is permitted for all members' meetings, such as special meetings or annual meetings. Further, in situations where owners are entitled to be mailed notice of board meetings, electronic notice may be used in lieu of mailing.

### **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.

### **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.

### **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.

### **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.

### **Broadcast Notice**

In lieu of or in addition to the physical posting of notice of any meeting of the board, 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. Certain rules must be followed (i.e., prescribed number of times that notice must air within a 24-hour period and the amount of time the notice must remain on-screen for a viewer to read the full notice) when television notice is used in lieu of posted notice.

### **Quorum/Voting Requirements**

The definition for board meetings includes the phrase “at which a quorum of the members is present.” The term quorum is not defined by the Condominium Act for meetings of the board. However, under the provisions of the Not For Profit Corporation Act in Florida, a quorum of the board of directors is a **majority** of the directors, **unless the articles of incorporation or bylaws require a different number**. Therefore, the association must refer to its documents when determining a quorum of the board. The Not For Profit Corporation further states that in no event may a quorum of the board be less than one-third of the prescribed number of directors (617.0824, F.S.).

When determining how many board members are in attendance at a board meeting, board members may not use proxies towards establishing a quorum. However, a board member may attend the meeting by speaker phone and, in so doing, be counted towards establishing a quorum. If a board member is attending by speaker phone, that board member is also allowed to vote, provided the speaker phone is such that everyone in attendance at the meeting can hear both sides of the conversation.

At board meetings, board members may not vote by proxy under any circumstances. The only time that the board is allowed to vote by secret ballot is in electing its own officers. Business is always to be conducted in the open. A board member who is not present at a meeting may join in any action taken at that board meeting by written concurrence. However, this concurrence may not be used in establishing a quorum.

The Condominium Act states that a director of an association who is present at a board meeting shall be presumed to have assented to the action taken unless he votes against the action or abstains from voting because of an asserted conflict of interest. In other

words, a director cannot attend a meeting and not participate. If the board member is present at the meeting or in attendance by speaker phone, that member must vote “yes”, vote “no”, or abstain due to a conflict of interest and state what that conflict is. If the board member does nothing, that member’s vote is counted as having agreed with the motion.

## **Setting the Agenda**

Typically, a set agenda is established in the bylaws of most condominium associations. If not provided for in the bylaws, and no rules have been adopted by the board, *Robert’s Rules of Order* is widely accepted as the *de facto* standard for setting rules of procedure that will govern board meetings. To view a sample Agenda, see page 164.

## **Sunshine Laws**

Section 718.112(2)(c) of the condominium statute provides that meetings of the board shall be open to all unit owners. The law states that the right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. A condominium association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

## **Sunshine Law Exceptions**

Section 718.112(2)(c), F.S. provides that the requirement that board meetings and committee meetings be open to the unit owners is inapplicable to meetings between the board or a committee and the association’s attorney, with respect to “proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.” Thus, condominium association boards (or committees) may hold closed meetings when they are meeting with legal counsel to discuss pending litigation. The statute also permits closed meetings with legal counsel regarding “proposed” litigation.

## **Committee Meetings**

Section 718.103 (6), F.S., defines a committee as “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.” All committee meetings that meet this definition must be open to all unit owners and are subject to the same noticing requirements as board meetings. Unit owners have the right to participate in committee meetings, subject to any adopted reasonable rules. Other types of committee meetings are also subject to these noticing and participation requirements unless those other types of committee meetings are exempted from these requirements by the bylaws.

## **Unit Owner Meetings**

The documents of the association are to include the method by which unit owner meetings are called. The Condominium Act requires that, at a minimum, the unit owners have at least one annual meeting.

## **Annual Meeting**

The Condominium Act requires two types of notices to be given prior to holding the annual meeting: (1) written notice must be mailed, hand delivered, or electronically transmitted to each unit owner, and (2) notice must be posted in a conspicuous place on the condominium property. Notice must be given at least 14 continuous days prior to the annual meeting. Prior to the 14-day notification, a unit owner may waive (in writing) the right to receive notice of the annual meeting. An officer of the association, manager, or other person providing notice of the meeting of the association must provide an affidavit or United States Postal certificate of mailing, affirming that the notice of the annual meeting was mailed, hand delivered, or electronically transmitted to each unit owner at the address last furnished to the association. The affidavit becomes part of the official records of the association. To view a sample affidavit, see page 168.

The annual meeting notice is required in addition to the notices that are sent pursuant to the regular election of the board. Remember that the election of the board of directors occurs at the same time and place as the annual meeting of the association.

## **Regular Meetings**

In addition to the annual meeting of the association, the bylaws of the association may make provisions for regular meetings of unit owners. This is a matter to be determined by the bylaws or individual needs of the association. Some associations will desire to have frequent regular meetings of unit owners while other associations do not feel the need for frequent meetings.

## **Special Meetings**

Special meetings are usually called when a matter is of sufficient urgency that it cannot wait until the next regularly scheduled unit owner meeting or until the next annual meeting. An example of a special meeting is a meeting called for the purpose of amending the declaration. The bylaws of the association usually set out the procedure for calling special meetings of the unit owners. However, in the event that the association bylaws are silent on the subject, the association may want to refer to Chapter 607 and 617, Florida Statutes, as a reference.

## **Casting The Vote**

In order for unit owners to conduct business at a meeting, there must be a quorum present. Unless a lower number is provided in the bylaws, a majority of the voting interests (which is any number greater than half of all voting interests) constitutes a quorum. (check 718.112(2)(b)1)

If a quorum is present at a meeting, there are two methods by which unit owners may cast their votes: (1) in person; or, (2) by proxy. A unit owner may cast a vote in writing without a meeting if authorized by the bylaws or declaration. The documents may contain provision relating to the use of these methods. For example, the documents may require that proxies be filed with an officer of the association a certain number of days

prior to the meeting. The documents may not, however, deny unit owners the right to vote by proxy. The only instance in which a unit owner may not vote by proxy is in the election of the board of directors, unless the association has adopted alternative election procedures.

Various methods may be utilized to register the vote of those unit owners present at a meeting. Roll call voting, showing of hands, voice voting, open ballots, or secret ballots are all permissible methods of registering votes. The association should decide upon the method of voting to be used prior to the commencement of the meeting in order to avoid misunderstandings.

The general membership of a condominium association retains the ultimate decision-making authority over certain matters. The Condominium Act specifically requires unit owner approval in the following areas:

- Unless otherwise specified in the declaration, unit owner approval is required to amend the declaration of condominium (not including developer amendments to add a phase to the condominium and to record the certificate of surveyor). 718.110(1)&(2)
- To change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus. 718.110(4)
- To merge two or more independent condominiums of a single complex to form a single condominium. 718.110(7)
- To acquire property and purchase land or recreation leases. 718.110(7)&(8)
- To waive the requirements for annual financial statements for associations with more than 50 units. 718.111(14)
- To adopt alternate election procedures. 718.112(2)(d)7
- To provide less than adequate or no reserves. 718.112(2)(f)
- To expand reserve funds for the purposes other than what was intended. 718.112(2)(f)3
- Unless otherwise specified in the bylaws, unit owner approval is required to amend the bylaws. 718.112(2)(h)
- To recall members of the board of directors 718.112(2)(k)



- Unless otherwise specified in the declaration, unit owner approval is required to make material alterations or substantial additions to the common elements or to real property which is association property. 718.113(2)
- To cancel a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract. 718.115(1)(b)1
- To excuse the developer from assessments (if not already provided for in the documents). 718.116(9)(a)
- To terminate a condominium. 718.117
- To elect a majority to the board at turnover. 718.301(2)
- To cancel certain grants or reservations made by a declaration, lease, or other document, and any contract made by an association prior to turnover. 718.302
- To opt out of the competitive bid requirements (for associations with less than 100 units). 718.3026
- Other areas as may be provided for in the condominium documents.

## **Proxies**

Section 718.112(2)(b), F.S., provides guidelines regarding the use of proxy voting by condominium associations. A proxy, not to be confused with a ballot, is a form that you fill out which allows someone else to vote for you in your absence, either in a general or specific manner. Proxies may not be used in the election of board members (unless the association has adopted alternate election procedures). Board members cannot vote by proxy at board meetings, but unit owners are allowed to use them in certain situations.

There are two types of proxies – general and limited. General proxies are used for general voting powers where a limited proxy is not specifically required. If you assign a proxy with limited “general powers” to someone, that means the person holding your proxy can vote for you as he or she sees fit on any item that requires a unit owner vote and for which a limited proxy is not required. To view a sample General Proxy, see page 169. For a sample Limited Proxy, see page 170

### **EXAMPLE:**

At the annual meeting under “New Business”, the question comes up whether or not to hire a community association manager. The board decides to take a vote from the unit owners to determine what action to take. You are not able to attend this meeting so you assign a general proxy to your neighbor. Since you have given your neighbor a proxy with general powers, your neighbor can vote for you in your absence however he or she chooses.

A limited proxy is similar to a general proxy in that someone else is authorized to cast your vote. However, “limited powers” means that the proxy holder is limited to cast the vote for you only in the manner in which you have directed on each item listed on the proxy form itself. If a proxy is used, a limited proxy is required when voting to waive or reduce reserves, waive the financial statement requirements, amend the declaration and bylaws, and when voting on any other matter for which the Condominium Act requires a vote of the unit owners.

**EXAMPLE:**

Your association has always fully funded the reserve accounts and these accounts have been earning interest. Due to a hurricane, your insurance premium tripled. Instead of levying a special assessment against all unit owners for the deficit in the operating fund, the board would like to use the interest in the reserve accounts that has accumulated to pay for the premium that is due. The board sends out a notice for a special unit owner meeting at which a vote will be taken to use the reserve funds for a purpose other than what was intended. You will be out of town on the day of the special meeting but you want to vote on this issue, so you give your proxy to your neighbor. Since this is a vote that is required by the Condominium Act, a limited proxy must be used. You give your neighbor your limited proxy on which you have indicated that you approve the use of the reserve interest to be used for the insurance premium that is due. Your neighbor can cast that vote for you only in the manner in which you have already cast it on your proxy form, since the proxy you signed has limited powers.

A limited proxy must contain:

- The name of the unit owner voting by proxy;
- The name of the person authorized to cast the vote;
- The date the proxy was given;
- The date, time, and place of the meeting;
- The items the proxy holder may vote on; and,
- The way the proxy holder must vote on the limited proxy form.

A proxy must specify the meeting to which it relates. If the meeting is adjourned, then this proxy is good for any continuation of that meeting. In no instance is it good for longer than 90 days from the original meeting date. Proxies are also revocable at any time by the person giving the proxy. This means that if you give your proxy to your neighbor, and later you change your mind and want a different neighbor to hold your proxy, you can take your proxy from the first neighbor and give it to the second because proxies are revocable at any time. The same would hold true if you gave your proxy to your neighbor but it turned out that you could attend the meeting. You can retrieve your proxy from your neighbor and cast the vote yourself.

Administrative rules require that when using a limited proxy it must be substantially similar to the form adopted by the Division of Land Sales, Condominiums and Mobile Homes. To view a sample of a Limited Proxy, click see page 170.

## **Participation At Meetings**

As previously stated, both board and committee meetings are open to all unit owners with the exception of meetings where litigation is being discussed with the association's attorney. Other types of committee meetings must also be open to all unit owners, unless those meetings have been exempted in the bylaws. Additionally, unit owners have the right to speak on all designated agenda items subject to reasonable written rules adopted by the board in advance. That is, the board can adopt rules governing the manner, frequency, and duration of unit owner statements; however, they cannot limit the number of unit owners who may speak. The board may adopt a rule that requires a unit owner to file a request in advance of the meeting if he or she wishes to speak at the meeting. Although the board can also limit the length of speaking time for each unit owner, Rule 61B-23.002, F.A.C., states that the unit owner must be given at least three minutes to speak.

## **Right to Record Meetings**

In addition to speaking at meetings, unit owners may also tape record or videotape board meetings, committee meetings, and unit owner meetings. This is permissible as long as the tape recorder or video camera does not produce distracting light or sound. Additionally, if adopted in advance by the board or the unit owners as a written rule, the following rules could apply:

- Advance positioning of the equipment;
- The person operating the equipment would not be allowed to move about the room; and,
- Notice would have to be given in advance of the meeting

If audio and video recordings are made by the board or at the direction of the board, the recordings must be maintained at least until the minutes of the meeting have been approved. After approval of the minutes, the recordings may be discarded unless the board elects to preserve them as part of the association's official records.

Before instituting rules governing unit owner participation at meetings, it is imperative that associations become familiar with the provisions of Rule 61B-23.001 and 61B-23.002, F.A.C.

## **Minutes of Meeting**

Most boards operate under *Robert's Rules of Order*, either through mandate from the bylaws, or simply because most people are familiar with *Robert's* as a standard reference for parliamentary procedure. Under *Robert's Rules of Order*, the chair of a meeting typically does not vote, except to break ties. This is not the case for associations. Typically, the chair of board meetings is the association's president, who is also a member of the board. As a member of the board, the president is entitled legally to vote on issues before the board.

A typical set of board minutes should be one to three pages in length. The minutes should reflect:

- The date, time, and place at which the meeting was called to order.
- The presiding officer.
- The establishment of a quorum, with attendees listed by name.
- Proof of proper notice for the meeting.
- Disposal of unapproved minutes from previous board meetings.
- A summary of reports given to the board and a statement by whom the reports were given (a one or two sentence summary is typically sufficient).
- Unfinished business.
- New business.
- Adjournment.

Whenever an item of board business is put to a vote, the person making the motion for approval of the item should be identified in the minutes, as should the name of the person who seconds the motion. The exact wording of the motion should also be included in the minutes. The points raised in debate are typically not included in the minutes.

The condominium law requires the vote of every director to be recorded in the minutes. Accordingly, if five directors vote in favor of a motion and two are opposed, the minutes should reflect the names of the five who voted for the item, as well as the names of the two who voted against. There is a similar requirement in the statute for homeowners' associations.

As part of the association's official records, the minutes for all meetings must be available for inspection by unit owners or their authorized representatives at any reasonable time. The minutes are to remain a part of the association's official records for at least 7 years.

## **ELECTIONS**

Statutory/Rule Preferences

Election Procedures

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

Rule 61B-23.0021, F.A.C.

Requesting an Election Monitor

718.5012(9)

Rule 61B-23.00215

Role of the Ombudsman

718.5012(9)

The board of directors of your condominium association must be elected by a process outlined in the Condominium Act and the administrative rules of the Division of Florida Land Sales, Condominiums and Mobile Homes. These procedures must be followed by all condominium associations unless alternate election procedures have been adopted. *Alternate election procedures are discussed in greater detail later in this section.*

Any vacancy on the board of administration caused by the expiration of a term must be filled by electing a new board member. The election must be held at the same time and place as your annual meeting. Proxies may not be used in these elections. Individuals are elected to the board by written ballot or voting machine. Ballots, envelopes, and any other items used in the election process must be maintained as part of the association's official records for a period of one year from the date of the election to which these items relate.

It is important to note that nominating committees are prohibited. Search committees are acceptable provided they only encourage individuals to run for the board and do not have the power to nominate.

## **Advance Notice**

**Two notices** must be mailed or delivered to the unit owners prior to the election itself, in addition to the annual meeting notice.

### **The First Notice of Election**

The first notice of election must:

- be mailed, electronically transmitted, or delivered to each unit owner at least 60 days prior to the election
- contain the correct name and mailing address of the association.

This notice should remind the unit owners that if they wish to run for election, they must submit their notices of intent, in writing to the association not less than 40 days prior to the election. To view a sample notice, see page 175.

### **The Second Notice of Election**

The second notice of election must be mailed, electronically transmitted, or delivered to the unit owners with the annual meeting notice and agenda not less than 14 days, and not more than 34 days, prior to the election. To view a sample notice, see page 175

Included with the second notices are:

- the printed ballots
- the envelopes for returning the completed ballots
- any candidate information sheets that have been submitted to the board

## **Notices of Intent**

Any unit owner or other eligible person who desires to be a candidate for the board of administration must give written notice to the board not less than 40 days prior to the election. Written notice is effective when received by the association. Such notices of intent should be submitted to the association by one or more of the following methods:

- certified mail, return receipt requested,
- personal delivery,
- regular U.S. mail,
- facsimile,

- telegram.

Upon receipt of a timely delivered notice by personal delivery the association must issue a receipt acknowledging delivery of the written notice.

## **Eligibility**

Any unit owner who is age 18 or older is eligible to serve on the board. The only exception is if the person has been convicted of a felony by a court of record in the United States and whose right to vote remains suspended. Restrictions to the statute, such as requiring that board members must be unit or parcel owners, must be contained in the governing documents.

## **Campaigning**

The Condominium Act does not prohibit candidates from campaigning for election. Moreover, any candidate may submit a personal information sheet to the association not less than 35 days prior to the election. This sheet may not exceed one side of an 8½ x 11" sheet of paper and may contain information describing the candidate's background, education and qualifications as well as other factors deemed relevant by the candidate. To view a sample Candidate Information Sheet, see page 176.

The association must distribute copies of such sheets with the second notice of election. The information sheets may be printed on both sides of the page to reduce costs. If consented to in writing by the candidates involved, two or more candidate information sheets may be consolidated into a single page. The association may not edit, alter or otherwise modify the content of the information sheet. The original copy provided by the candidate becomes part of the official records of the association.

## **Ballots and Envelopes**

The ballot must list all eligible candidates in alphabetical order by last name and must not indicate whether any candidates are incumbents. No write-in candidates are permitted. Additionally, the ballot must not have a space for the voter's signature. Except in an association where all units are not entitled to one whole vote (fractional voting) or where all units are not entitled to vote for every candidate (class voting), all ballot forms must be uniform in color and appearance. In the case of fractional voting all ballot forms utilized for each fractional vote must be uniform in color and appearance. If class voting is used, all ballot forms for a given class must be uniform in color and appearance. To view a sample Election Ballot, see page 178.

When the second notice of election is given to the unit owners, the association must provide each unit owner with at least one outer envelope, and with one inner envelope and one ballot for each unit owned by that owner. The inner and outer envelopes are for returning the completed ballots and ensuring secrecy in voting. Each smaller, inner envelope is to contain one completed ballot and is not to have any identifying markings on it. The larger, outer envelope is to be pre-addressed to the person or entity authorized to receive the ballots on behalf of the association. The outside of this

envelope must have a place for the name of the eligible voter, the unit identification(s), and the voter's signature.

Once the eligible voter completes the ballot the voter places it inside the inner envelope and seals it. The inner envelope is then placed inside the outer envelope and also sealed. An owner of more than one unit may place several inner envelopes in a single outer envelope, but each inner envelope may contain no more than one ballot. The owner then writes the number(s) of his or her unit(s) and signs the outside of the outer envelope. The sealed envelope may either be mailed or hand delivered to the association. Once received by the association, no ballot may be rescinded or changed. Such envelopes received by the association are not to be opened until the election meeting.

It is important to note that, for a regular election, balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. If there are not more candidates than vacancies, then, not later than the date of the scheduled election, the association must hold a meeting of the unit owners to announce the names of the new board members or 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.

## **Conducting Your Election**

The election of the board members must take place at the same time and place as the annual meeting. Your documents should indicate when your annual meeting is to take place. A quorum is not required to hold the election, however, at least 20 percent of the eligible voters must cast ballots in order for the election to be valid. The association must have additional blank ballots available at the election for distribution to eligible voters who have not yet voted. These ballots must be handled in the same manner as if previously submitted, using both the inner and outer envelope and signing the exterior of the outer envelope.

As the first order of business at the election meeting the ballots not yet cast are collected. All ballots, whether submitted prior to the election or turned in at the election must be handled by an impartial committee at the election meeting. The impartial committee, which is appointed by the board of directors, must not include:

- current board members or their spouses
- officers or their spouses
- candidates for the board or their spouses.

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

The impartial committee may, but is not required to, check outer envelope information prior to the election meeting. **Notice that the committee will meet for this purpose must be posted at least 48 hours in advance.** The meeting must be open to all unit owners and must be held on the day of the election. After all envelope information has been verified and the eligible voters' names checked off the roster, the outer envelopes may be opened. As soon as the first outer envelope is opened the polls must close and no more ballots may be accepted. The inner envelopes are first removed from the outer envelopes (that were not disregarded) and placed in a receptacle. Then the inner envelopes are opened and the ballots are removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot is marked "disregarded" and the ballots contained inside are not counted. All envelopes and ballots, whether disregarded or not, must be retained with the official records of the association.

### **Tie Breaker**

In the event of a tie the association must conduct a runoff election for the candidates who tied unless the bylaws provide a different method for deciding tie votes. If a runoff election is required it must be held not less than 21 days nor more than 30 days after the date of the election at which the tie occurred. Within seven days of the election at which the tie vote occurred the board must mail or personally deliver to the voters a notice of the runoff election. The notice must inform the voters of the date the runoff election is scheduled to occur, include a ballot conforming to the requirements of the regular election ballot and include copies of any candidate information sheets previously submitted by the candidates involved.

### **Voting Machines**

If voting machines are used instead of ballots, they must:

- Secure secrecy in the act of voting;
- Permit the voter to vote for as many persons and offices as the voter is lawfully entitled to vote for, but no more;
- Correctly register or record and accurately count all votes cast for any and all persons;
- Be furnished with an electric light or proper substitute giving sufficient light to enable voters to read the ballots; and
- Be provided with a screen, hood or curtain, which must be made and adjusted so as to conceal the voter and the voter's actions while voting.

### **Assistance In Voting**

Any individual who requires assistance to vote by reason of blindness, disability or inability to read or write may request the assistance of a member of the board of administration or other unit owner in casting the individual's vote. If the election is by voting machine any such voter before retiring to the voting booth may have assistance in identifying the specific vacancy or vacancies and the candidates for each. If a voter requests assistance, the voter and the assistant may both enter to the voting booth for the purpose of casting the vote according to the voter's choice.



## Election Rights of Owners

- Receive the first notice of an election no less than 60 days prior to the election either by mail or personal delivery.
- Submit his or her name in writing as a candidate for election to the board no less than 40 days prior to the election.
- Submit candidate information sheet no less than 35 days prior to the election.
- Receive a second notice of the election, a ballot, an inner envelope, an outer envelope and copies of any timely submitted candidate information sheets no less than 14 days prior to the election either by mail or personal delivery.
- Vote for the board by written, secret ballot or voting machine if there are more candidates than vacancies. If there are not more candidates than vacancies then the association is not required to hold an election.
- Vote for the board by limited or general proxy if different election procedures are approved by a majority of the total voting interests and are provided for in the association bylaws.

## Alternate Election Procedures

An association may use voting and election procedures different from those described in this manual. However, **a majority of the total voting interests must first vote in favor of amending the bylaws to provide for alternate voting and election procedures.** This vote may be by a proxy specifically delineating the different voting and election procedures. The alternate voting and election procedures may allow elections to be conducted by limited or general proxy.

## Proxies - General Information

A condominium unit owner may use a proxy form to vote on an issue in the event that he or she cannot attend the meeting at which the issue will be decided. The proxy form is given to someone (the proxy holder) who is expected to attend the meeting in the absent owner's place and act on the owner's behalf. To view a sample General Proxy, see page 169; to view a sample Limited Proxy, see page 170.

A unit owner who plans to attend a meeting by proxy should make sure that the entrusted person plans to attend the meeting and can be relied upon to deliver the proxy form to the association. (Many associations require proxy holders to give the proxy form to the association secretary before the meeting begins. The unit owner should consult the association bylaws and articles of incorporation.) It would be wise for the unit owner, or the proxy holder, or both, to keep a copy of the proxy form that was delivered to the association.

## General vs. Limited Proxy

A limited proxy form is one in which the owner has specified how the proxy holder is to vote on a specific issue. With a limited proxy, the proxy holder may not decide how the owner's vote will be cast, and the owner's vote must be counted as indicated on the limited proxy form. A general proxy form, on the other hand, generally indicates that the owner has authorized the proxy holder to attend the meeting on the owner's behalf.

The holder of a general proxy may exercise his or her own judgment regarding how to vote on issues presented at the meeting. However, the Condominium Act prohibits holders of general proxies from voting on certain matters.

Limited proxies are required for:

- voting on waiving reserves or on assessing for reserves that will be less than adequate;
- voting on an amendment to the declaration of condominium, articles of incorporation, or bylaws;
- voting on reducing the financial reporting requirements at year's end; and
- voting on any other issues when the vote is specifically required or permitted by the Condominium Act. Although general proxies may not be counted for such matters, they may be counted for the purpose of establishing a quorum at a meeting where such matters are decided.

Limited proxy forms must substantially conform to the format adopted by the Division of Land Sales, Condominiums and Mobile Homes. BPR Form 33-033 can be found at the Division's website.

## **Limited Proxy Form Instructions**

### **Responsibilities of the association**

- Fill in the condominium or cooperative name, date and time of the meeting, and the location at which the meeting will be held.
- Fill in the name and/or position of an officer or director who will serve as proxy holder in the event that no other proxy holder is named by the voter.
- Under the section for limited powers, write clearly the question or issue for which the owner may indicate a vote, both for and against, to be cast.
- Provide instructions to the voter regarding the completion of the proxy.

### **Responsibilities of unit owners**

- If not already shown on the proxy, write in your unit number.
- In the appropriate place, print the name of your designated proxy holder. If you do not name anyone, your vote will be cast by the officer or director designated on the form.
- In the general powers area, decide whether or not you wish to have your proxy holder determine how to cast your vote on issues other than those listed under limited powers. If you choose to do so, mark the appropriate space granting that power.
- Read the issues in the limited powers area, and mark your vote for or against each.
- Sign and date the form and give it to the designated proxy holder or return it to the association.

## **Election Monitor Requests**

Unit owners 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. As provided by Section 718.5012(9), Florida Statutes, 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,

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.

## **Petition For Election Monitor**

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.

The form can be obtained by contacting the Division of Florida Land Sales, Condominiums, and Mobile Homes, Northwood Centre, 1940 North Monroe, Tallahassee, Florida 32399-1030 or via the web at [http://www.myflorida.com/dbpr/lsc/documents/6000\\_9\\_election\\_monitor.pdf](http://www.myflorida.com/dbpr/lsc/documents/6000_9_election_monitor.pdf)

Alternatively, a petitioner may use a substantial equivalent of the form which shall contain the following information. The form must, as applicable:

- 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;
- 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;
- Identify his or her unit number;
- Supply the date that each unit owner signed the petition;
- 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;
- 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
- State the total number of voting interests in the association.

- Briefly state the basis for having an election monitor appointed (optional).
- State the date, place, and time of the election.

Only the signatures of 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.

### **Time to File for Election Monitor**

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.

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. 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.

- 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.
- Once a petition has been found to be adequate, the ombudsman shall appoint an election monitor as provided by the provisions of Section 718.5012(9), Florida Statutes, and this rule. Any appointment of a division employee shall be subject to the approval of the division director.
- 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.
- 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.
- 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.

- 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.

### ELECTION CHECKLIST

[http://www.myflorida.com/dbpr/lsc/documents/election\\_checklist.pdf](http://www.myflorida.com/dbpr/lsc/documents/election_checklist.pdf)

**This tool is offered to provide guidance for complying with the election procedures addressed by sections 718.112(2)(d) Florida Statute and Rule 61B-23.0021 Florida Administrative Code. If the association has adopted alternate election procedures, then it must follow those procedures as set forth in its bylaws.**

#### *Instructions*

To use the *Election Checklist*, begin by filling in the date of the election at the bottom of the list. Then proceed by counting backwards 14 days, 35 days, 40 days and 60 days, to determine the latest date for completing each step of the election process according to the Condominium Act. Do **NOT** count the election date. As you arrive at each date, write in the date next to its corresponding task. Your documents may require a longer period of time for notice of association meetings. The time frames listed below pertaining to the notices of an election and an annual meeting constitute the *minimum* requirements under the Condominium Act. As the association completes each step, place a check mark in the first column to indicate completion.

The items on the checklist indicate those activities that the Condominium Act requires prior to the election itself. Additionally, the association should allow ample time to have the notices and the ballots printed, buy and stuff envelopes, etc. We recommend that associations expand this *Election Checklist* to include other items. **Note:** If a majority of the total voting interests has voted in favor of amending the bylaws to provide for alternate voting and election procedures, then the association must follow the procedures set forth in its bylaws.

## Election Checklist

ü	Deadline - (fill in date)	Action Required
		First notice of election must be mailed or delivered by today - not less than 60 days prior to the election.
		Written notices of candidacy must be submitted to the association by today -not less than 40 days prior to the election. A person convicted of any felony by any United States court of record and who has not had his or her right to vote restored is not eligible for board membership at a condominium.
		Candidates must submit their information sheets by today if they wish to have them included with the second notice of election - not less than 35 days prior to the election.
		Second notice of election including the annual meeting notice, agenda, ballots, envelopes and any information sheets timely submitted must be mailed or delivered by today - not less than 14 days nor more than 34 days prior to the election.
		Election Day - same time and place as annual meeting

## **RECALL**

Statutory/Rule Preferences

Recall

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

Recall Arbitration

Chapter 61B-50, F.A.C.

Recall at a Unit Owner Meeting

Rule 61B-23.0027, F.A.C.

Recall by Written Agreement

Rule 61B-23.0028, F.A.C.

Right to Recall and Replace a Board Member

Rule 61B-23.0026, F.A.C.

Along with the right to elect directors in a condominium association, the Condominium Act also provides a procedure by which directors can be removed from office. This process is known as recall.

The recall of a member or members of the board of administration may be accomplished by either of two methods

- By a vote at a unit owner meeting; or,
- By written agreement

Unit owners have the right to recall a board member with or without cause. If a majority of the voting interests in the association no longer desire an individual to be on the board, the unit owners can remove that person from the board by following the recall procedures described in this section.

## **General Recall Facts**

A few things about recall remain constant, whether or not it is done at a unit owner meeting or by written agreement:

- Any board member can be recalled with or without reason
- It takes a majority of all the voting interests to approve the recall.
- If the recall is not disputed by the board, the recalled member steps down and returns any association records to the board within five (5) business days.
- If the recall is disputed by the board, the board must petition the Division for arbitration within specific time frames. If the board fails to timely petition for arbitration, the recall is deemed effective.
- If the recall is disputed and recall arbitration is timely requested, board members subject to recall continue to serve until the arbitration is completed and a final order is issued by the arbitrator.
- The minutes of recall meetings becomes official records of the association, and these records are open for inspection and copying at all reasonable times.
- Individuals appointed or elected to the board by the developer may be recalled only by the developer. Individuals appointed or elected by unit owners other than the developer may be recalled only by unit owners other than the developer.

## **Recall By Vote At Unit Owner Meeting**

The Condominium Act and administrative rules provide that 10% of the voting interests may call a unit owner meeting for the purpose of recalling one or more board members. To initiate a meeting for this purpose, a list must first be circulated and signed by 10% of the voting interests, regardless of any provisions to the contrary in the condominium documents. The administrative rules are very specific as to what this list must contain.

Pursuant to Rule 61B-23.0027(2)(a), F.A.C., the signature list must contain the following items:

### **Recall by a vote at a unit owner meeting**

Ten percent of the voting interests' signature list to petition for a unit owner meeting to recall must:

- State that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board.
- State that replacement board members will be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting.
- Contain lines for the voting interest to fill in his or her unit number, signature, and date of the signature.

The Condominium Act requires that the special meeting of the unit owners for the purpose of recall must be noticed as required for any other meeting of the unit owners. The recall meeting notice must include the following items:

The recall meeting notice must:

- State that the purpose of the unit owner meeting is to recall one or more members of the board.
- List each board member individually by name that is to be recalled at the meeting, even if the entire board is to be recalled.
- Specify a person, other than a board member subject to recall, who will determine if a quorum is present, call the meeting to order, preside, and conduct the recall meeting in accordance with the administrative rules.
- Have a copy of the signature list adhering to the requirements of the administrative rules attached to it.
- If a majority of the board or more is to be recalled, state that an election to replace the recalled board members will be conducted at the meeting.
- If a majority of the board is to be recalled, list at least as many eligible persons who are willing to be candidates for replacement board members as there are board members being recalled. If less than a majority of the board is subject to recall, candidates for replacement are not to be listed as the remaining members of the board may appoint replacements.
- State that nomination from the floor may be taken for replacement board members.

**\*Note: Electronic transmission of notice is not authorized for a special meeting when a recall vote is scheduled.**

## **Recall Meeting**

The unit owner meeting for the purpose of recall is to be held and conducted following the guidelines in the administrative rules. If the association is incorporated, the recall meeting is to be held not less than 10 days nor more than 60 days from the delivery or mailing date of the recall notice, unless otherwise provided in the documents. If the association is unincorporated, the meeting must be held within the time frame provided by the condominium documents.

The meeting itself is to run as follows. The individual named as the presiding officer on the notice determines if a quorum is present. In addition to unit owners present at the meeting, both general and limited proxies may be used to establish the quorum. The presiding officer then calls the meeting to order and presides over the meeting.

A representative who will receive notices or other papers on behalf of the unit owners must be elected by the unit owners or approved by the presiding officer. This is required so that in the event the board disputes the recall and timely files for recall arbitration with the Division, the unit owners will have an individual designated to



receive information concerning the recall arbitration. Also elected or appointed is a person to take the minutes of the meeting. The administrative rules allow for *one* person to perform the duties of the presiding officer, the unit representative, and the recorder of the minutes, if the association desires.

In addition to the items typically recorded in the association's meeting minutes, the minutes of the recall meeting must include:

- The date the recall meeting was held
- The times the recall meeting was called to order and adjourned
- The name or names of the person or persons chosen as the presiding officer, the recorder of the minutes, and the unit owner representative's name and address
- The vote count taken on each board member subject to recall
- In the event of a majority or more of the members being recalled, the vote taken on each candidate to replace a board member, as well as to which seat each person was elected, if applicable
- Any other items typically recorded in the minutes (state that a quorum was established, etc.)

A separate vote must be taken for each board member subject to recall unless the association's documents provide otherwise. The recall meeting minutes must be delivered to the board and become an official record upon delivery.

## **Electing Replacement Board Members When Recalled By Vote At Unit Owner Meeting**

### **Recall of less than a majority**

If less than a majority is recalled, the remaining board members may appoint individuals to fill the vacancies created by recall and the appointed individuals serve until the next scheduled election. When appointing replacements, the board must adhere to the guidelines for developer/non-developer representatives. Remember, only the developer may recall and replace board members elected by the developer and only non-developer unit owners may recall and replace board members elected by non-developer unit owners. (See Rule 61B-23.0026, F.A.C.)

If less than a majority of the board is recalled, the board may determine not to fill the vacancies by a vote of the remaining board members. Likewise, if the board is unable to fill the vacancies (i.e., there is a tie vote, or a quorum is not obtained), the board may, in its discretion, choose to hold an election. In this instance, an individual is elected for the entire remaining term of the vacancy. If an election is opted for, the association must follow the guidelines in 718.112(2)(d)3, F.S. and Rule 61B-23.0021, F.A.C.

## **Recall of a majority or more**

If a majority or more of the board is recalled, an election is held at the unit owner meeting to fill the vacancies created by the recall. Again, only the developer may recall and replace board members elected by the developer and only non-developer unit owners may recall and replace board members elected by non-developer unit owners. When a majority or more of the board is being recalled, the notice of the recall meeting must state that an election will be held at the meeting, list any eligible candidates, and indicate that nominations may be taken from the floor. Individuals are allowed to vote in person or by limited proxy in a recall election. The voting interests vote for the same number of candidates as there are vacancies created by the recall. The replacement board members take office only if the recall is not disputed by the board, or, if the recall is disputed and arbitration is timely requested, after the recall is certified by an arbitrator. The only way the board may dispute a recall is by timely filing for arbitration.

Elected replacement board members serve only until the next regularly scheduled election regardless of the remaining terms of the seats being filled. The administrative rules do state, however, that if the association has begun the regular election process then the individual would serve until the next scheduled election in the future.

EXAMPLE: The annual election is scheduled for January 1. It is now November 10 and the first notice of election was sent out over 10 days ago. Since the association has already mailed or delivered the first notice of election, the replacement board members would serve until the next scheduled election *after* the January 1 election.

## **Board Action Concerning Recall**

The board must properly notice and hold a meeting within 5 full business days of the adjournment of the unit owner meeting to recall. At this meeting the board determines whether to certify the recall. The minutes of the board meeting at which the board determines to certify or not to certify the recall must contain items typically recorded in the association's board meeting minutes as well as:

- The date the board meeting was held
- The times the board meeting was called to order and adjourned
- Whether the recall was certified by the board
- If the recall is certified, the manner in which vacancies will be filled
- If the recall is not certified, the specific reasons that it was not certified
- Any other items typically recorded in board meeting minutes (i.e., names of board members present, a statement that a quorum was attained, etc.)

The minutes of the board meeting become an official record of the association. The administrative rules mandate that the recall of one or more members does not in itself constitute grounds for an emergency meeting of the board as long as proper notice has been given by the unit owners. The board meeting concerning recall must be noticed at least 48 hours prior to the meeting, just as any other regular meeting of the association's board.

If the board certifies the recall, it is effective immediately and the recalled member or members must return any association records or other association property with 5 full business days of the board meeting. If the board determines not to certify the recall, the board must then timely file for recall arbitration with the Division.

## Recall By Written Agreement

The unit owners may choose to recall a board member or board members by an agreement in writing of a majority of all the voting interests. The written agreement used for the purpose of recall must be signed by at least a majority of the voting interests and must:

- List by name each board member sought to be recalled
- Provide spaces by the name of each board member sought to be recalled for the unit owner to indicate whether to “recall” or “retain” that board member
- 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 (**applies only in cases where a majority or more of the board members is being recalled**)
- Provide spaces by each candidate’s name for the unit owner to vote for as many replacement candidates as there are board members subject to recall (**applies only in cases where a majority or more of the board members is being recalled**)
- Provide a space for write-in votes for replacement board members (**applies only in cases where a majority or more of the board members is being recalled**)
- Provide a space for the person to state their name and unit identification
- Provide a signature line for the person to affirm their authorization to cast the vote
- Contain the name of the designated representative who will 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 recall arbitration, receive notices or other papers on behalf of the persons executing the written agreement.

A Written Recall Agreement/Ballot can be downloaded from the DBPR web site at [http://www.myflorida.com/dbpr/lsc/documents/recall\\_agreement\\_ballot.pdf](http://www.myflorida.com/dbpr/lsc/documents/recall_agreement_ballot.pdf)

When a minority of the board is being recalled, candidates for replacement members are not to be listed, as the remaining board members may appoint replacements. The original of the written agreement is to be sent to the board by certified mail or by personal service in the manner authorized by Chapter 48, F.S., and the Florida Rules of Civil Procedure. The written agreement becomes an official record of the association upon service on the board.

## **Board Action Concerning Recall By Written Agreement**

Within 5 full business days after receipt of the written agreement, the board must properly notice and hold a meeting of the board. Generally, the board meeting to determine whether to certify a recall does not qualify as an emergency meeting. It is imperative that adequate notice is provided. At this meeting, the board determines whether to certify the written agreement. If the board certifies the recall, it is effective immediately and the recalled member or members must return any association records or other association property with 5 full business days of the board meeting. If the board determines not to certify the recall, the board must then timely file for recall arbitration with the Division (see Recall Arbitration in this section).

The minutes of the board meeting at which the board determines whether to dispute the recall must contain items typically recorded in the association's board meeting minutes as well as:

- The date the board meeting was held
- The times the board meeting was called to order and adjourned
- Whether the recall was certified by the board
- If the recall is certified, the manner in which vacancies will be filled
- If the recall is not certified, the specific reason that it was not certified
- Any other items typically recorded in board meeting minutes (i.e., names of board members present, a statement that a quorum was attained, etc.)

The minutes of the board meeting concerning recall by written agreement are an official record of the association.

## **Electing Replacement Board Members When Recalled By Written Agreement**

### **When less than a majority is recalled**

If less than a majority is recalled, the remaining board members may appoint individuals to fill the vacancies created by the recall and the appointed individuals serve until the next scheduled election. When appointing replacements, the board must adhere to the guidelines for developer/non-developer representatives. Only the developer may recall and replace board member elected by the developer and only non-developer unit owners may recall and replace board members elected by non-developer unit owners.

If less than a majority of the board is recalled, the board may determine not to fill the vacancies by a vote of the remaining board members. Likewise, if the board is *unable* to fill the vacancies (i.e., there is a tie vote, or a quorum is not obtained), the board may, in its discretion, choose to hold an election. In this instance, an individual is elected for the entire remaining term of the vacancy. If an election is opted for, the association must follow the guidelines in 718.112(2)(d)3, F.S., and Rule 61B-23.0021, F.A.C..

## **When a majority or more is recalled**

If a majority or more of the board is recalled, the candidates listed on the written agreement as replacement board members are elected to fill those vacancies created by the recall. Rule 61B-23.0028(1)(c), F.A.C. requires that there be at least as many replacement board members as there are board members being recalled. The election is decided by whoever receives the most votes on the written agreement. Elected replacement board members serve only until the next regularly scheduled election regardless of the remaining terms of the positions being filled. The administrative do state, however, that if the association has begun the regular election process, then the individuals would serve until the next scheduled election in the future.

EXAMPLE: The annual election is scheduled for January 1. It is now November 10 and the first notice of election was sent out over 10 days ago. Since the association has already mailed or delivered the first notice of election, the replacement board members would serve until the next scheduled election *after* the January 1 election.

## **Non-Certification of the Recall**

If the board determines not to certify the recall by a vote at a unit owner meeting or by written agreement, the board must file with the Division a petition for recall arbitration within 5 full business days after the board meeting where they determine not to certify the written agreement or the unit owner vote. If the board fails to file a petition for arbitration within 5 full business days, or fails to file a petition for arbitration at all, the recall is effective. Likewise, if the board fails to notice and hold a board meeting within 5 full business days of service of the written agreement, or within 5 full business days of the adjournment of the unit owner recall meeting, the recall is effective. In this instance, board members subject to recall must immediately turn over any records and property of the association to the association. **The only way the board may not certify a recall is by timely filing for arbitration.**

## **Recall Arbitration**

If the board of directors determines not to certify a recall, regardless of whether the recall was done by vote at a unit owner meeting or by written agreement, the only method provided for in the Condominium Act for not certifying a recall is to timely file for recall arbitration. The board's decision to file for recall arbitration must be based on good cause - for example, if fault is found with the manner in which the recall was carried out. The form required for filing a petition for recall arbitration can be downloaded from the DBPR web site at [http://www.myflorida.com/dbpr/lsc/documents/recall\\_petition\\_form.pdf](http://www.myflorida.com/dbpr/lsc/documents/recall_petition_form.pdf)

A board member may be recalled with or without cause. The board member cannot file for recall arbitration simply because they do not wish to acknowledge the recall. There must be a discrepancy with the unit owner meeting procedures as outlined in 718.112(2)(k), F.S., and Rule 61B-23.0027, F.A.C., or the written agreement pursuant to 718.112(2)(k), F.S., and Rule 61B-23.0028, F.A.C., or some other valid basis. The board must record its specific reasons for not certifying the recall in the minutes of the

board meeting and must file the minutes with the petition for recall arbitration in order for a petition for recall arbitration to be accepted.

A petition for recall arbitration will not be accepted if submitted by only the member subject to recall or by any single member of the board. Each member of the board is entitled to vote whether to certify or dispute a recall. It takes an agreement of a majority of the board to file for recall arbitration. The board must file a petition adhering to the provisions of 61B-50, F.A.C., within 5 full business days of the board meeting where the board determined to dispute the recall.

The petition for recall must be printed, typewritten, or otherwise duplicated in legible form, double spaced, and on one side of the page only. The petition must contain:

- The name and address of the association
- The name(s) and address(es) of the board member(s) recalled
- The name and address of the unit owner representative selected to receive information on behalf of the unit owners
- A statement of whether the recall was by vote at a unit owner meeting or by written agreement
- If the recall was by a vote at a meeting, the petition must state the date of the recall and the time the meeting was adjourned
- If the recall was by written agreement, the petition must state the date and time the board received the written agreement, and a copy of the written agreement to recall must be attached to the petition
- The date of the board meeting at which the board determined not to certify the recall, and the times the meeting was called to order and adjourned
- A copy of the minutes of the board meeting at which the board determined not to certify the recall
- Each specific basis upon which the board based its determination not to certify the recall
- Complete copies of the bylaws, articles of incorporation, the declaration of condominium, and association rules, including all amendments, as well as any other documents which are pertinent to the petition
- The total number of voting interests in the association
- Other information which the board believes to be material
- All petitions must be signed either by a duly authorized board member, a member of the Florida Bar, or a qualified representative retained by the board

Upon receipt and review of the petition for recall arbitration, the Division will either accept or deny the petition. If the petition is accepted, the arbitrator will notify the unit owners that the recall has been submitted for arbitration by mailing a copy of the petition to the unit owner representative identified on the petition. Any board member subject to recall continues to serve until a final order is issued by the arbitrator unless the board member resigns. The unit owners who recalled the board member or members are considered one party in the arbitration proceedings. If the arbitrator certifies the recall, the recall will be effective upon mailing of the final order of

arbitration to the association. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may appoint individuals to fill the vacancies. If a majority or more are recalled, those elected at the unit owner meeting or elected on the written agreement take office upon certification by the arbitrator.

## **BUDGETS**

### Statutory/Rule References

Budget Items	718.504(20)(c), F.S. Rule 61B-22.003, F.A.C.
Budget Meeting	718.112(2)(e), F.S. Rule 61B-22.003, F.A.C.
Common Expenses	718.115(1), F.S.
Frequency of Assessing	718.112(2)(g), F.S.
Multi-Condominium	Rule 61B-22.003, F.A.C.

### **The Budget**

Think of the budget as being a formal written plan of the association’s projected expenditures for a given period of time. It’s a very important item that communicates the board’s plans for the association and significantly affects the operation of the association. Therefore, it is vital that the board takes the time to review the requirements in the statutes and the association’s documents and to apply appropriate budgeting techniques.

The Department of Business and Professional Regulation has published “Budgets & Reserve Schedules, *A Self-Study Training Manual for Beginners*” to guide associations through the budget preparation process. Portions of the manual are presented here. The full manual can be viewed and downloaded by visiting [http://www.myflorida.com/dbpr/lsc/documents/budgets\\_and\\_reserves.pdf](http://www.myflorida.com/dbpr/lsc/documents/budgets_and_reserves.pdf)

### **Why Do Associations Have A Budget?**

It is imperative that the board understands the importance of establishing an operating budget that reflects, as closely as possible, the association’s projected expenses. The board is responsible for administering the affairs of the association and, by law, has a fiduciary relationship to the unit owners. By definition, a fiduciary is a person who stands in a special relation of trust, confidence, and responsibility in his or her obligations to others. If prepared properly, the budget can assist the board members in fulfilling this obligation. However, it takes careful planning to establish a budget that ensures sufficient money is collected from the unit owners to cover all of the association’s expenses.

An association's budget assists the board of directors by projecting expenses and creating a benchmark by which to compare the board's stewardship of the financial assets of the association. The budget provides for control over certain restricted funds of the association. It also identifies how much money must be collected from the unit owners – assessments – and how often the collection must be made. Basically, the budget is simply a map that will guide the board in making decisions during the course of the year. Since the budget is only an estimate of future expenses, unexpected events may occur that will require the board to make changes to the budget during the budget period.

## **When to Begin the Budgeting Process**

It is a good idea to start gathering information needed to prepare the proposed budget three months before it becomes effective. This should give you plenty of time to do such things as compare historical budget versus actual performance, research the payment histories of association members, identify and talk to key people about the costs of equipment and services, and determine whether additional expenditures are needed to maintain the property, etc.

## **Fiscal Year**

The budget must cover an annual operating period known as the fiscal year. The fiscal year may be the calendar year or some other 12 month period. Most Florida condominium and homeowner associations use a calendar year for their fiscal year (January 1 through December 31). However, alternative fiscal years such as April 1 through March 31 or October 1 through September 30 are also used. The bylaws will usually indicate the fiscal year for the association. You must know what the fiscal year is for the association in order to draft the annual budget.

## **Meetings Held While Developing the Budget**

Often, the board or budget committee will meet to gather and discuss information and make decisions as the proposed budget is developed. Notice of these meetings must be posted appropriately and open to the unit owners. You need to be aware of the laws about noticing these meetings. The Condominium Act, Chapter 718 of the Florida Statutes, and the related administrative rules provide guidance on this topic. In short, they indicate that board meetings and committee meetings have the same notice requirements.

**Note that any meeting at which the budget will be considered for adoption requires 14 day notice. Board and committee meetings at which the budget will not be considered for adoption require 48 hour notice to the unit owners.**

Some tips for preparing board and committee meeting notices are:

- Ensure you have plenty of time to prepare the notice. Specify the date, time, and location of the meeting on the notice;
- Include a list of specific agenda items to be addressed in the meeting; and



- Post the completed notice in a conspicuous location on the property at least 48 hours before the meeting. (A specific location for posting meeting notices should have already been designated.)

If there is no property to post the notice on, it must be mailed, hand-delivered or electronically transmitted to the unit owners at least 14 days before the meeting. Keep in mind that if the condominium documents (e.g., declaration of condominium, bylaws, and articles of incorporation) provide guidelines that are more restrictive than the statutes, then the documents must be followed. For example, the law addressing notice of board and committee meetings requires 48 hour notice preceding the meeting except in an emergency. If the condominium documents require 72 hours notice before the meeting, the association must provide 72 hour notice. On the other hand, if the documents require 24 hours notice before the meeting, the association must provide at least 48 hours notice.

## **Sections of the Budget**

The budget has two main sections - operating and reserve.

### **Operating**

The operating portion of the budget identifies the categories of expenses (called line items) that relate to the day-to-day operation of the association. These expenses can be anticipated to be incurred on a fairly regular basis such as monthly or annually. The dollar amounts assigned to each line item are the estimates of how much money may be spent on that particular line item for the budget period. Operating expenses are not restricted to the estimates provided and the board can use money allocated to one operating line item for other purposes. In other words, money in the operating section of the budget is not restricted to any particular purpose.

Examples of line items that are generally found in the operating section of the budget include:

- Bad Debt
- Salaries
- Office Supplies
- Management Fees
- Utilities
- Taxes
- Insurance
- Vending Machines
- Accounting
- Division Annual Fees
- Corporate Fees
- Legal
- Postage
- Office Equipment

## **Reserves**

The reserve section contains funds that are restricted for specific purposes. The Condominium Act requires that reserves be established for certain items including: roof replacement, building painting, pavement resurfacing, and any other item of capital expenditure or deferred maintenance that exceeds \$10,000.

## **Use of Reserves for Other Purposes**

As opposed to the operating section, funds that are a part of the reserve section can only be used for the purpose intended, unless approved by a vote of the unit owners. If the board identifies a need elsewhere for the funds, the board cannot simply withdraw and use them. Reserves can only be used for the purpose intended. Subsection 718.112(2)(f)3., of the Florida Statutes indicates that reserve funds and reserve interest must be used for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests present, or represented by limited proxy, at a duly called meeting of the unit owners.

A Sample Limited Proxy Form may be downloaded at [http://www.myflorida.com/dbpr/lsc/documents/33-033\\_sample\\_limited\\_proxy.pdf](http://www.myflorida.com/dbpr/lsc/documents/33-033_sample_limited_proxy.pdf) to assist associations with their use. Limited proxies are used if an owner cannot, or chooses not to, vote in person at the meeting. The following example illustrates the steps an association will typically go through to obtain this type of vote:

### **Example:**

Due to recent storm damage, the building's roof needs to be replaced sooner than scheduled. The association plans to use funds from the roof replacement reserve account, and it will file a claim with the insurance company. However, this will not generate sufficient funds to pay for the work. The board of directors has determined it will be in the best interests of the association to pull funds from the pavement resurfacing reserve to cover the shortfall. Before this can be done, the board must determine the following:

- The number of units in the condominium. (Assume, for this example, a condominium has 100 units)
- The vote assigned to each unit. (Assume, for this example, that the assigned voting interest is one vote per unit)
- The number of the voting interests needed to establish a quorum. A quorum must be established at the meeting, in person or proxy, before business can be conducted. (Assume for this example that the association needs at least a majority – just over half – of the total voting interests need to be present or represented by proxy to establish a quorum. At least 51 of the 100 voting interests are required for the quorum)
- The procedures for calling a unit owner meeting. If proxies are used, a limited proxy, substantially the same as the Sample Limited Proxy Form (see Forms section of this manual) must be provided to the owners.

The board is then able to call the unit owner meeting, and 80 voting interests are present in person and by proxy. Since 80 exceeds the required minimum quorum of 51, a quorum is established and the meeting can continue. After counting the votes, 41 votes approve of using a portion of the pavement resurfacing reserve to help pay for the roof replacement.

In this example, the association needed to establish a quorum at the unit owner meeting and obtain approval from at least a majority, or just over half, of the voting interests present or represented by limited proxy to use reserve funds for other purposes. Since a quorum was established and 41 votes (a majority of the 80 votes present or represented by limited proxy) approved the action the board can withdraw the funds needed to help pay for the roof replacement. Note that general proxies may be used for the purpose of establishing a quorum, but only limited proxies may be used to conduct the vote.

NOTE: Multicondominium associations should refer to Rule 61B-22.005(7), F.A.C., for procedures on voting to use reserve funds for other purposes.

## **The Budget Meeting**

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, mail, or electronically 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. The affidavit shall be filed among the official records of the association.

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. The board must receive, 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.

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 improvements to the condominium property.

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.

## Accounting Records

Accounting records consist of all those records that record, measure, and communicate financial information, whether maintained electronically or otherwise.

These records include items such as:

- Accurate, itemized, and detailed records of all receipts and expenditures;
- A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due;
- All audits, reviews, accounting statements, and financial reports of the association;
- All contracts for work to be performed. Bids for work to be performed are official records and must be maintained for a period of one year; and
- Any other records that identify, measure, record, or communicate financial information.

**NOTE:** Multicondominium associations must maintain separate accounting records for itself and for each condominium it operates.

**NOTE:** The accounting records must be maintained within the State of Florida and retained by the association for at least seven years.

## Accounting Software

To facilitate recording, maintenance, and retrieval of accounting information, you may want to consider purchasing some type of accounting software. Software packages, such as spreadsheets and others that are specifically tailored for condominium associations are readily available. You may want to contact your CPA, licensed community association manager, or other software experts to assist you in locating the software that is appropriate for your association.

## Good Accounting Practices

Accounting records should be maintained according to good accounting practices. This means that the accounting records should be maintained in sufficient detail so that when someone inspects the records, that person will be able to determine the assets,

liabilities, cash flows, as well as all of the revenues and expenses of the association. Good accounting practices also include controls to protect the financial assets of the association.

As the size of an association increases, the complexity of the financial record-keeping will also increase. In addition, associations of all sizes are vulnerable to fraud and embezzlement. You should consult a CPA or other professionals to obtain more information on developing adequate internal controls and safeguards.

## **Providing Access to Accounting Records**

One more item to keep in mind before moving on to developing the budget is the concept of access to records. The Condominium Act provides that the accounting records are open to inspection by any unit owner or authorized representative at all reasonable times. Additionally, if a written request for access to the records is received by the association, the records must be made available within five (5) working days. The unit owner or authorized representative has the right to make or obtain copies from the association. A fee cannot be charged for simply accessing the records. Associations may adopt reasonable, clear, and understandable rules addressing:

- How unit owners should provide the association with notice for requesting access (e.g., whether the notice must be in writing and sent by certified mail, to whom the notice should be given, what information the notice must contain, etc.).
- Frequency of access, reasonable restrictions on number of times per week or month that access will be granted.
- Time of access, including all reasonable working hours.
- Manner of inspecting the accounting records (e.g. whether a board member or other designated individual will be present during inspection, whether or not the records can be removed from the location, etc.).
- Location where the records may be inspected or copied.

**Note:** If the association fails to allow unit owners access to the records, Section 718.112(2), F.S. (The Condominium Act) provide for certain remedies, including monetary damages for the unit owner.

## **Investing Association Funds**

While the Condominium Act does not restrict the types of investments that associations may use to generate a return on its funds, there are a few things that board members should keep in mind about investing association funds. First, board members have a fiduciary duty to the membership. Such a relationship requires prudent investment decisions that carefully consider risk and return. Next, board members should consider the deposit limits that are insured by the federal government. The risk to association funds can be limited by spreading the bank accounts out so that no one account has excess exposure. Associations should also consider using separate accounts for operating and reserve investments.

There are several reasons that this may be a good idea. Since most associations collect monthly assessments, the operating cash should be highly liquid (readily available) and usually kept at a level necessary to cover monthly expenses, plus a cushion. On the other hand, reserve funds are usually maintained with less liquidity in mind and generally have higher average balances in the accounts than operating funds. Using a separate account for the restricted fund investments is also a good control procedure that helps ensure that the board does not unknowingly spend funds that are set aside for one purpose on something other than what was intended.

Note that section 718.111(14), F.S., prohibits associations from commingling operating and reserve funds except for investment purposes. "Investment purposes" means that there is an expectation of a return on the principal deposits. Tax implications of the association investment decisions are beyond the scope of this manual. You should seek the advice of your tax professional before making your investment decisions.

**NOTE:** It is possible that an association may place its funds in accounts other than bank accounts. The term "bank accounts" was used here for the ease of explanation.

**NOTE:** Multicondominium associations should refer to Rule 61B-22.002, F.A.C., for information on how to maintain the accounting records.

## **The Association's Accounting Information System**

Keep in mind that the accounting system needs to be designed in accordance with the association's size and budget. The accounting information system for a very small association may consist of index cards and a check register. As the size of an association increases, the level of sophistication of its accounting information system increases.

It's important that the system be organized and maintained in such a way so that anyone can look at the records and determine what the revenues and expenses are for both the operating and reserve funds. You should consult with an accountant knowledgeable about condominium associations to ensure the system is organized properly and is able to produce the accounting records required by the Condominium Act and the related administrative rules.

Consider purchasing a general ledger software program that's user-friendly and easy to update. It should be designed for condominium associations or easy to adapt to fund accounting. The program should make the process of updating the books faster, easier, and more accurate by having specific codes assigned to all revenue and expense accounts. Purchasing this type of software is generally more feasible for medium to large associations that have numerous monetary transactions. It's usually more expensive than other software packages, such as spreadsheet programs, that may be useful for smaller associations.

Updating the books can be quite tedious, especially for medium and large associations that have numerous general ledger accounts. The software program, if organized

properly, can be a great help in ensuring the records are maintained and kept up-to-date as they should be. If the association chooses to keep the books by hand instead of using a computer, ledger books can be purchased to accomplish this. You can find these at retail or office supply stores. They come in a variety of formats so you will just need to examine the ones that are available to see what will work for you.

**Example**

The Condominium Act requires the association to maintain a current account and a monthly, bi-monthly, or quarterly statement of the account for each unit designating the name of the unit owner, the amount of each assessment, the due dates, amounts paid upon the account, and the balance due. Assume that the unit owners are billed for assessments on a quarterly basis. The Subsidiary Accounts Receivable Ledger for assessments has a separate ledger page for each unit.

The Accounts Receivable Subsidiary Ledger for unit owner Joseph Miller is as follows:

**Figure 5.1 Sample Accounts Receivable Subsidiary Ledger**

Joseph Miller Unit 210				
Date	Amount Due	Description	Payment Made	Balance
1/1/06	\$100	First Quarter's Assessment	-	\$100
1/5/06	-	Paid Check #2319	\$100	\$0
3/1/06	\$100	Second Quarter's Assessment	-	\$100
3/3/06	-	Paid Check #2342	\$100	
6/1/06	\$100	Third Quarter's Assessment	-	\$100
6/5/06	-	Paid Check #2360	\$100	
7/10/06	\$200	Special Assessment for Pool Repair	-	\$200
8/8/06	-	Paid Check #2385	\$200	
9/1/06	\$100	Fourth Quarter Assessment	-	\$100

**ASSESSMENTS (FUNDING THE BUDGET)**

Statutory/Rule References

718.103, F.S.

**Allocation of Common Expenses**

Assessments are the primary source of funding the association's annual budget. The board's power to assess allows the association to carry out its responsibility for the management, operation, and maintenance of the condominium.

Once the budget has been presented and adopted by the membership, the board establishes a payment schedule and assesses each member an amount arrived at by a formula established in Florida Statute, 718. The formula requires each unit owner's share of the common expenses be based on the same percentage as the unit's ownership interest in the common elements.

The percentage ownership in the common elements assigned to each unit is set by the developer at the time that the declaration of condominium is recorded. Prior to January 1, 1992, developers were not required to follow a formula or standard when selecting common element percentages. However, developers recording a declaration of condominium after January 1, 1992 are required to base common element assignments to each unit on either the square footage of the unit or upon equal shares of each unit. Once established, the percentage cannot be later changed or modified without each affected unit owner's consent.

### **Regular Assessments**

The greatest share of the funds required for payment of the common expenses and funding of the budget will be levied as assessments against the individual unit owners in the condominium. The board must require that payments be made in advance and must be made at least quarterly. The condominium documents should describe the frequency of collection, due dates and provide for late fees and interest on delinquent assessments.

### **Special Assessments**

On occasion, associations may incur unanticipated expenses that require additional financial participation by the membership. Unless the association's declaration of condominium or other governing documents require a membership vote, special assessments are adopted by the board. Such special assessments must be properly noticed as a special meeting with the notice specifying the purpose of the special assessment.

### **Liability For Assessments**

The condominium unit owner is liable for all assessments coming due while still the legal owner. Assessment liability cannot be avoided by a unit owner unless all other owners are also proportionately excused from liability for payment. Dissatisfaction with the association or the board or waiving the use or enjoyment of the unit or common elements does not absolve a unit owner of their assessment obligation.

## **COMMINGLING OF FUNDS**

Statutory/Rule References

718.111(14), F.S.

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

According to the Condominium Act, 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.

Multicondominium associations are not prohibited 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](#).

## **FINANCIAL RECORDS MAINTENANCE**

### Statutory/Rule References

Accounting Records	718.111(12)(a)11, F.S. Rule 61B-22.001(1),
F.A.C.	Rule 61B-23.002, F.A.C.
Maintaining Records	718.111(12)(b), F.S. Rule 61B-22.002, F.A.C.
Viewing Records	718.111(12)(b)&(c), F.S.

The board of directors has certain record-keeping and financial reporting responsibilities.

### **Daily Accounting Records**

Accounting records reflect the daily entry of all receipts and expenditures for the association. These records may be maintained by a member of the association or any person or firm hired to perform the work. The Condominium Act requires that the records be kept according to good accounting practices, which usually means the generally accepted accounting principles (GAAP) established by the Financial Accounting Standards Board (FASB). The FASB is a non-governmental organization which develops new principles and addresses accounting problems.

Often, the books and records set up by the developer are adequate for continued use by the association. Many associations can turn to unit owners for their expertise in operating businesses, bookkeeping, and accounting to establish a workable accounting system. Associations that cannot obtain the necessary skill set from its members should seek the assistance of a Florida Certified Public Accountant or other professional who is knowledgeable of the accounting procedures for condominium associations.

The records may be kept at an office on the condominium property or at some other location within the state of Florida. The accounting records must be maintained in enough detail to identify the actual revenues and expenses or receipts and disbursements. The records must be kept according to good accounting practices and be open to unit owners or their authorized representatives at all reasonable times. Unit

owners also have the right to make or obtain copies at an expense not to exceed 25 cents per page if the association owns, leases, or has reasonable access to a photocopy machine. The association cannot charge a fee for simply inspecting the accounting records. If a unit owner makes a written request to view the records, the association has five (5) working days after receipt of the request to make them available. However, the association can adopt reasonable rules regarding frequency, time, location, notice, and manner of inspecting and copying.

## **Types of Records**

The Condominium Act requires that accounting records be maintained for a period of at least seven (7) years, whether they are maintained manually or electronically. These records include but are not limited to:

- Accurate, itemized, and detailed records of all receipts and expenditures. These items might include invoices, cancelled checks, contracts, and bills of sale for the association property.
- A current account and a monthly, bimonthly, or quarterly statement of the account for each unit, designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
- All audits, reviews, accounting statements, and financial reports of the association or condominium.
- All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained for one year.
- Meeting minutes which contain the vote adopting the budget and votes on the level of financial reporting and level of reserves, if applicable.

Other types of accounting or financial records related to the operation of the association, which must be maintained in the official records, include all payroll records, all invoices for purchases made by the association and all invoices for services provided to the association.

General ledgers may be used to record and document receipts and expenditures of the association, and subsidiary ledgers can provide more detail of these transactions. Additionally, there are software programs available to maintain and record accounting and financial transaction electronically.

All of the accounting records mentioned must be maintained in the official records of the association. Board members must remember that each unit owner has a right to know how all of the association funds are being distributed and how much revenue the association is accumulating. The board has been given the authority to manage the association, but each unit owner should be aware of how the association is operating.

## **Taxes**

Many laypersons assume that since a homeowners association is registered as a “not for profit” corporation with the State of Florida, it must also be a “tax exempt” corporation according to the Internal Revenue Service (I.R.S.). While understandable, this assumption is wrong. A homeowners association is a taxable entity. Generally, however, a homeowners association can avoid paying income taxes to the I.R.S., assuming that the association only performs the administrative tasks involved with maintaining the common areas of the association and also files the necessary forms with the I.R.S.

This discussion is divided into two sections, the first dealing with Form 1120H, a filing specifically available to homeowners associations; and the second dealing with Form 1120, the filing generally available to all corporations.

### **Form 1120H**

Internal Revenue Code (“I.R.C.”) § 528, which governs the filing of Form 1120H, establishes a special system of taxation that is completely separate from the standard corporate income tax regime. In order to utilize I.R.C. § 528, a homeowners association must meet several requirements in order to qualify as a “homeowners association.”

Primarily, the association must be one where substantially all of the units are used by individuals for residences, and also no part of the association’s net earnings may flow through to the benefit of any private shareholder or individual. If a homeowners association does in fact qualify as a “homeowners association,” then all money received by the homeowners association from home owners in the form of membership dues, fees, or assessments is exempt from tax (“exempt function income”). On the other hand, any money received by the homeowners association for other purposes is taxed at a flat 30% tax rate. Examples of earnings that are subject to tax are any earnings resulting from the homeowners association’s investment of money in stocks or bonds, and earnings resulting from the homeowners association charging an admission fee for the use of its swimming pool. If the homeowners association elects to be subject to I.R.C. § 528’s provisions, then it must file a separate election for each taxable year by filing a properly completed Form 1120H.

### **Form 1120**

Filing a standard Form 1120 may be preferable to filing Form 1120H because the homeowners association can avoid the negative consequences of filing Form 1120H discussed below in section III. Certain types of income that are not taxable on Form 1120H, however, will be taxable on Form 1120. This possibility of increased taxable income, however, is not as significant as it may first appear. A homeowners association’s general purpose is to collect fees from its individual members and then pay out most, if not all, of this money for common services, such as cable or property insurance, as well as the maintenance of common areas. Thus, a homeowners association should theoretically have very little excess of income over its expenses. If

this basic assumption is true, then the homeowners association's taxable income on Form 1120 should be low.

Even if a homeowners association does in fact have some income, the I.R.S. has established two groups of income that are tax-exempt for purposes of a homeowners association.

### **Exception for Taxation of a Homeowners Association's Excess Funds**

The first group of exempted income is for a homeowners association's common surplus, provided that the homeowners association satisfies a few requirements. Under the standard corporate tax regime which governs the filing of Form 1120, any excess funds, such as a common surplus, are subject to tax as retained earnings and are taxed at a rate of 15%. Pursuant to Internal Revenue Service ("I.R.S.") Revenue Ruling 70-604, however, taxation of excess funds is avoided if the homeowners association refunds the common surplus to its members on a pro rata basis, or rolls the common surplus over into the next year's budget.

In order to take advantage of Revenue Ruling 70-604, the homeowners association must fulfill several requirements. First the homeowners association must make an election on Form 1120 in order to utilize Revenue Ruling 70-604. Secondly, this election must be made each year. Thirdly, the election must be made according to a vote of the homeowners association's membership, and this vote must be made in writing. Finally, if the election is made to roll the money over into the next year's budget, the money must be completely spent in the next year.

### **Exception for Specific Assessments**

In addition, annual additions to reserves in community interest realty associations are includable in gross income. However, Revenue Ruling 74-563, Revenue Ruling 75-370, and Revenue Ruling 75-371 allow an exception for assessments that are:

- Specifically approved by an annual vote of the owners;
- Specifically designated for specific capital expenditure items;
- Remain in a separate bank account and are not commingled with other funds of the homeowners association; and
- Actually spent for the approved designated specific capital expenditures.

### **FORM 1120H VS. FORM 1120**

A homeowners association may decide not to utilize I.R.C. § 528 Form 1120H for several reasons. First of all, the homeowners association's earnings that do not constitute exempt function income will be taxed at a flat 30% tax rate on Form 1120H versus the graduated tax brackets of Form 1120, the lowest of which is 15% and is generally available to homeowners associations. Another negative consequence of filing Form 1120H is that certain corporate deductions are not available on Form 1120H that are available on Form 1120. Finally, if a corporation that files Form 1120 suffers a net operating loss, it can utilize that net operating loss as a deduction against income up to two years earlier or up to twenty years in the future. A corporation that

files Form 1120H, however, can not utilize a net operating loss as a deduction against income from other tax years.

As this article illustrates, homeowners associations have options in reducing their income taxes. Whether they choose to file Form 1120H or Form 1120, a homeowners association should be able to pay little, if any, tax.

## **Association Fees**

Statutory Reference

718.501(2)(a), F. S.  
61B-23.002(1)(a), F.A.C.  
61B-23.002(2), F.A.C.

Each condominium association that operates more than two units is required to pay to the Division of Florida Land Sales, Condominiums, and Mobile Homes an annual fee of \$4.00 for each residential unit. The fee is due by January 1 of each year. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due.

The division is required to mail to the association an annual fee statement. Failure to receive the annual fee statement shall not relieve the association of the obligation to pay the fee. Associations must notify the division of a new mailing address within 30 days of a change of address.

**SECTION 3: COMMUNITY DEVELOPMENT DISTRICTS**

# COMMUNITY DEVELOPMENT DISTRICTS

This section provides an overview of the mechanisms for setting up a district, how the financing is handled, CDD governance, and operations and maintenance responsibilities. For detailed information on CDDs, visit <http://www.FloridaSpecialDistricts.org>

## Introduction

Community Development Districts are a relatively new mechanism for financing infrastructure for large development projects in Florida. Using a combination of Florida law authorization and federal tax law authorization, developers of large projects can utilize low cost tax-exempt financing to provide for the financing of such infrastructure items as roads, water and sewer and drainage.

A CDD is a special purpose unit of local government granted powers to plan, construct, operate, finance and maintain community-wide infrastructure for the benefit of its residents. The CDD provides roads, bridges, appurtenant drainage and street lighting, water/sewer and master drainage and can, as well, provide security, fire service, and mosquito control. The CDD may assume responsibility for protecting conservation areas, providing on-site recreation, and maintenance levels matched to property owner standards and willingness to pay. Sec 190.002(1)(a), F.S. describes CDDs as: "a solution to the state's planning, management, and financing needs for delivery of capital infrastructure to service projected growth without overburdening governments and their taxpayers".

A CDD provides its residents with the option of having higher levels of services managed and financed through self-imposed charges. A CDD consolidates delivery of community infrastructure under a single entity. A CDD frees the County from the management or administrative burden for the District. The District helps its residents achieve an attractive quality of life and protect property values. The residents, property owners, and tenants of the District are county citizens as well.

## What Is a Community Development District?

A Community Development District ("CDD") is a local unit of a special-purpose government created and organized under the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the "Act"). A CDD is established after public hearings, is governed by an independent body established under the Act and is authorized to perform certain specialized functions. A CDD is an independent special district within a county or municipality and is endowed with certain powers, which are necessary for the effective construction, operation and maintenance of capital infrastructure and services

A CDD gives the landowner/developer an efficient financing mechanism by which (i) to use less expensive front-end capital to finance the installation of infrastructure and to assure the delivery of basic community services and (ii) to more economically pay for the operation and maintenance of infrastructure and services. Residents within a CDD will usually experience lower unit assessments costs for capital infrastructure and the

delivery of certain basic services due to lower financing costs associated with tax-exempt bond financing and potentially lower administrative costs as a result of localized, single purpose management.

During the early years of a CDD, the landowner/developer generally controls the governing body of the CDD, giving the landowner/developer an effective management entity to plan and implement the proposed development. A CDD performs management and financing functions for large-scale community development, but cannot function other than as authorized to implement the planning and regulatory parameters approved by local governments.

### **Limitations of CDD Powers**

Certain types of powers may not be exercised by a CDD. All governmental planning, environmental, and land development laws, regulations, and ordinances apply to all development of the land within a CDD.

CDDs do not have the power of a local government to adopt a comprehensive plan, building code, or land development code, as those terms are defined in the Local Government Comprehensive Planning and Land Development Regulation Act.

The creation of a CDD is not a development order under state law and a CDD can take no action which is inconsistent with applicable comprehensive plans, ordinances, or regulations of the applicable local general-purpose government.

### **Establishment of a Community Development District**

The procedure for establishment of a CDD depends on the size of the proposed CDD. A proposed CDD of 1,000 acres or more is created by a rule adopted by the Florida Land and Water Adjudicatory Commission (the "FLWAC", which consists of the Governor and the Cabinet) pursuant to the Administrative Procedure Act. If the proposed CDD is less than 1,000 acres, the CDD is created by an ordinance adopted by the board of county commissioners of the county containing a majority of the area of the proposed CDD; provided, however, that if any area of the land to be included in the proposed CDD is within the boundaries of a municipality, the county commission may not create the CDD without the approval of the municipality. If all of the land in the proposed CDD is within the territorial jurisdiction of a municipality, the CDD is created pursuant to an ordinance adopted by the governing body of the municipality. A county or municipality which has received a petition for establishment of a CDD may, within 90 days, transfer such petition to the FLWAC. It is then the responsibility for the FLWAC to grant or deny the petition. A county or municipality has no right or power to grant or deny a petition that has been transferred to the FLWAC.

Additionally, the governing body of any existing special district created to provide one or more of the public improvements and community facilities authorized by the act may petition for re-establishment of the existing district as a CDD.



## **Powers and Operation**

In order to allow a CDD to effectively finance and manage the major capital infrastructure of a development and to deliver basic community development services, the Act vests CDDs with certain special powers.

A CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain the following basic infrastructure:

- water management and control;
- water supply;
- sewer and wastewater management;
- bridges and culverts;
- district roads, and
- street lights

With the consent of the affected county or municipality, a CDD may also plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for:

- parks and facilities for indoor and outdoor recreational, cultural and educational uses;
- fire prevention and control;
- school buildings and related structures
- security, including but not limited to, guardhouses, fences and gates and electronic intrusion-detection devices;
- control and elimination of mosquitoes, and
- waste collection and disposal

## **Fund Raising Mechanisms**

Among the special powers vested in a CDD is the authorization to assess certain types of taxes and fees within the CDD.

### **Ad Valorem Taxes**

A CDD may levy and assess ad valorem taxes on all the taxable property within the CDD for the purposes of construction, operation and maintenance of assessable improvements, and for payment on general obligation bonds issued by the CDD.

- The levy of ad valorem taxes by a CDD must be approved by the qualified electors in the CDD by referendum when required by the state constitution.
- Ad valorem taxes which may be levied by a CDD are in addition to county and all other ad valorem taxes provided for by law.
- Ad valorem taxes levied by a CDD for operating purposes (exclusive of debt services on general obligation bonds) may not exceed 3 mills, except that a

CDD authorized to engage in any of the activities requiring the consent of the local general-purpose government may levy an additional 2 mills for operating purposes.

### **Benefit and Maintenance Taxes**

A CDD may levy benefit taxes to pay principal of, redemption premium, if any, and interest on bonds issued to finance water management and control facilities of the CDD and maintenance taxes to maintain and preserve such facilities.

### **Special Assessment Taxes**

A CDD may levy special assessments, in accordance with applicable law, for the construction or reconstruction of the systems and facilities which the CDD is authorized to undertake, and may issue certificates of indebtedness and assessment bonds in connection therewith.

### **Fees and Charges**

A CDD is authorized, after public hearing, to prescribe, fix, establish, and collect rates, fees, rentals or other charges, and to revise the same from time to time, for use of the facilities and services furnished by the CDD. A CDD may also provide for reasonable penalties against any user or property with respect to any rates, fees, rentals or other charges that are delinquent.

### **Financing**

A major benefit of a CDD is the authority to issue tax-exempt bonds and notes to finance the capital infrastructure of a development. This enables a CDD to finance the capital infrastructure of a development at a lower cost than would normally be incurred through conventional borrowing. A CDD may issue general obligation bonds, assessment bonds, revenue bonds and refunding bonds. A CDD may also issue bond anticipation notes. Bonds issued by a CDD are not backed by the full faith and credit of the county or municipality in which the CDD issuing such bonds is located, or by the state or any political subdivision, department or agency thereof. Any bonds to be issued by a CDD maturing over a period of more than five years must be validated and confirmed in accordance with the applicable laws of the state. Most financing undertaken by a CDD will be backed by special assessments.

### **Special Assessment Bonds**

Assessment bonds are special obligations of a CDD which are payable solely from proceeds of the special assessments levied for a public improvement or community facility that the CDD is empowered to provide. This is a specialized form of debt financing in which a long-term bond issued by the CDD is repaid through a special, compulsory charge or tax levied on specific properties rather than from general tax revenues.

Special assessments and betterments are generally used for the construction and maintenance of public improvements such as sewers, drains, sidewalks, and water

extensions. The underlying rationale of a betterment or special assessment is that the property owners should repay the bonds through special charges or assessments because their property values increase as a direct result of the capital improvements and they receive greater benefits from the project than the other citizens of the community do.

### **Advantages of Special Assessments**

There are several advantages to using special assessments and betterments. First, assessments fees are often exempt from property tax limitation laws. Second, tax-exempt institutions such as universities and hospitals, which do not pay for capital improvements supported by property taxes, are generally required to pay for their share of special assessments. Many local officials feel that betterments and special assessments are an equitable method of providing capital improvements since only those who specifically benefit from the project pay for it.

A CDD may levy special assessments in connection with the construction or reconstruction of the systems and facilities which the CDD is authorized to undertake. After any assessments for assessable improvements are made, determined, and confirmed as provided in the act, a CDD may issue for the amount so assessed against the abutting property or the property otherwise benefited. Such certificates are payable only from the special assessments levied and collected from the property against which they are issued. The proceeds of such certificates may be pledged for the payment of principal of, redemption premium, if any, and interest on any revenue bonds, assessment bonds or general obligation bonds issued to finance any assessable improvements, or, if not so pledged, be used to pay the cost or part of the cost of such assessable improvements. These special assessments will represent a lien on the property prior to any existing first mortgage. In most cases these assessments will be included as part of the normal property tax bill.

### **Revenue Bonds**

Revenue bonds are obligations of a CDD which are primarily payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge the property, credit, or general tax revenue of the CDD. A CDD may issue revenue bonds from time to time without limitation as to amount. Revenue bonds of a CDD need not be approved by the qualified electors of the CDD unless such bonds are additionally secured by the full faith and credit and taxing power of the CDD. Revenue bonds may be secured by, or payable from the gross or net pledge of the revenues to be derived from any project or combination of projects; from the rates, fees, or other charges to be collected from the users of any project or projects; from any revenue-producing undertaking or activity of the CDD such as a sewer system; from special assessments; or from any other source or pledged security.

### **Refunding Bonds**

Refunding bonds are bonds issued by a CDD to refinance outstanding bonds of any type and the redemption premium, if any, and interest thereon. Refunding bonds are

issuable and payable in the same manner as the refinanced bonds, except that no approval by the electorate is required unless required by the state constitution.

### **General Obligation Bonds**

The aggregate principal amount of general obligation bonds which a CDD may have outstanding at any one time, computed in accordance with the Act, may not exceed 35% of the assessed value of the taxable property within the CDD as shown on the pertinent tax records at the time of the authorization of such bonds. In arriving at the amount of general obligation bonds of a CDD permitted to be outstanding at any one time, there is not included any general obligation bonds which are additionally secured by the pledge of: (i) special assessments levied in an amount sufficient to pay the principal of, redemption premium, if any, and interest on the general obligation bonds so secured (provided certain requirements of the Act are complied with), (ii) water revenues, sewer, revenue or water and sewer revenues of the CDD to be derived from user fees in an amount sufficient to pay the principal of, redemption premium, if any, and interest on the general obligation bonds so secured, or (iii) any combination of assessments and revenues described in (i) and (ii).

### **Bond Anticipation Notes**

A CDD may, after the issuance of any bonds of the CDD has been authorized, borrow money for the purposes for which such bonds are to be issued in anticipation of the receipt for the proceeds of the sale of such bonds and issue bond anticipation notes in a principal sum not in excess of the authorized maximum amount of such bond issue.

### **Special Assessment Tax Procedures**

In 1988 the Florida Legislature created a uniform method for the levy, collection, and enforcement of non-ad valorem taxes. The method, which is found in Section 197.3632, Florida Statutes, allows non-ad valorem assessments, such as special assessments, to be levied on the property owner's ad valorem tax bill. In case of non-payment, the tax certificate can be sold, making the collection method extremely strong and bondable.

The statute provides a detailed list of the actions required by the local governing board, the tax collector, and the property owners. Most of the actions required by the local governing board and the tax collector are similar to those required for ad valorem taxes. The major difference is the inclusion of both ad valorem and non-ad valorem taxes on the same tax bill. The law provides extremely specific instructions as to the form and content of the combined tax bill including the size of the type required (8 points or larger) and the thickness of the line dividing and two sections (approximately 1/8"). Although the law requires that the form clearly separates the ad valorem and non-ad valorem taxes, if the entire amount is not paid a tax certificate can be issued against the property.

### **Summary of Non-ad Valorem Tax Collection Procedures**

Y Property Appraiser provides information on property within the District

- ÿ Local Governing Board adopts the non-ad valorem assessment roll
- ÿ Local Governing Board informs property owners
- ÿ Property Owners voice any objections at public hearing
- ÿ Local Governing Board certifies the non-ad valorem assessment roll to the Tax Collector
- ÿ Tax Collector combines all ad valorem and non-ad valorem taxes
- ÿ Tax Collector mails combined ad valorem and non-ad valorem tax bills to property owners

## **CDD Governance**

The District is governed through a Board of Supervisors initially elected by landowners and in the sixth year a phasing mechanism is provided for electors to qualify as supervisors.

The Board consists of five members, initially appointed by the landowner(s) for the first 90 days during which time a landowner's election is held. Members must be Florida residents and citizens of the United States.

Each landowner is entitled to cast one vote per acre of land owned within the District. Board members are elected to two year or four year terms such that three members stand for election every two years.

Commencing six years after the initial election (or ten years if the District is larger than 5,000 acres), the position of each member whose term has expired shall be filled by a qualified elector of the District, elected by the registered electors of the District. Every two years thereafter (in November) elections are held.

Elections held shall be conducted in the manner prescribed by law for holding general elections.

A majority of the members of the Board constitutes a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the District shall be upon a majority vote of the members present, unless general law or a rule of the District requires a greater number.

The Board shall keep a permanent record book in which shall be recorded minutes of all meetings, resolutions, proceedings, and all corporate acts. The record book shall be subject to inspection in the same manner as state, county and municipal records.

All meetings of the Board shall be open to the public and governed by the Provisions of Florida law, including the Sunshine Law.

## **Operations and Maintenance**

The Act charges the Board with hiring a professional District Manager, who will have charge and supervision of the works of the District and shall be responsible for preserving and maintaining any improvement or facility constructed or erected pursuant

to the provisions of the act, for maintaining and operating the equipment owned by the District, and may hire or otherwise employ and terminate the employment of such other persons as may be necessary and authorized by the Board.

In addition to the Manager, the Board will retain a professional consulting engineer and a General Counsel to provide the Board with the required guidance in the implementation of the powers, duties, and functions of the District.

The organization of the District is an important function of the Board of Supervisor's and the following guidelines are recommended for consideration by the Board.

## **Officers**

### **Chairman of the Board**

The chairman is elected by the Board members, must be a member of the Board, and is responsible for conducting Board meetings and for signing required documents of the District.

### **Vice Chairman of the Board**

Elected by the Board members, the vice chairman must be a member of the Board. The vice chairman will act in the position of Chairman in the absence of the Chairman.

### **Secretary of the Board**

The secretary is elected by the Board members and can be either a member of the Board or a member of Staff. This officer is responsible for keeping all of the public records of the District, including minutes, agendas, etc., along with attesting to the Chairman's signature on documents. Generally, the District Manager serves as the secretary to the Board of Supervisors.

### **Treasurer of the Board**

Elected by the Board members, the treasurer can be either a member of the Board or a member of Staff. Responsibilities include maintaining the accounting records of the District, including coordination with the Trustee and the auditor, Accounts Payable, Payroll, etc. Generally, the District Manager serves as the Treasurer to the Board of Supervisors.

### **Assistant Secretary**

Elected by the Board members.

### **District Manager**

A professional manager hired by the Board of Supervisors, the district manager has charge of the works of the District.

## **District Engineer**

The district engineer is a professional engineer hired by the Board of Supervisors, in accordance with the provisions of the Consultants Competitive Negotiations Act. The engineer assists the Board in implementing the functions, duties, and responsibilities authorized by the Act.

## **District Attorney**

A professional attorney, hired by the Board of Supervisors, provides legal guidance to the District.

## **Professional Support Staff**

The following professionals will be required in order for the Board of Supervisor's to review, evaluate, and provide advice and opinions on issues relating to the issuance of Bonds or Bond Anticipation Notes, for the construction of infrastructure facilities of the District. It is generally sound practice for the Board to engage all of the professionals to be involved in the financing at an early date. This facilitates maximum utilization of their time and talents and reduces the likelihood of last minute changes. Although there are a multitude of methods used to select these professionals, the single most important criteria is to select persons and firms with whom the District officials are comfortable and in whom they are confident.

## **Financial Advisor**

A professional financial advisor assists the District in preparing the special assessments and to provide independent advice to the District in evaluating proposals from the Underwriter. From a practical standpoint, the advisor can provide a level of confidence to the Board that they have done everything possible to achieve the most favorable financing.

## **Underwriter**

The underwriter is the firm that will purchase the Bonds from the District for resale to qualified investors. The underwriter's experience with Community Development Districts is important to the successful marketing of District Bonds. The unique financing vehicles used by the District require the District to engage an underwriter with expertise outside the realm of traditional municipal finance. The real estate development-driven financial structure of the District creates a unique partnership between the District, the Developer, and the Underwriter.

## **Bond Counsel**

A national firm of recognized professional attorneys who specialize in the issuance of tax-exempt bonds for local governments will be crucial to the District. The District's Bond Counsel will be responsible for drafting the Master Trust Indenture and all supplemental Trust Indenture's authorizing the issuance of the bonds as well as all documents necessary to successfully close the issue. In addition, a primary responsibility of Bond Counsel will be to render an opinion to the District that the

District's Bonds are tax-exempt under the law. This opinion will be relied upon by the Underwriter and the Bond Investor.

### **Underwriter's Counsel**

These professional attorneys are engaged by the Underwriter to represent the interests of the Underwriter in the transaction. Typically, the Underwriter's Counsel is responsible for the preparation of the Official Statement, which will be used to market the District Bonds.

### **Trustee, Bond Registrar, and Paying Agent**

A commercial bank or trust company organized under the laws of the United States, usually having a combined net capital and surplus of at least \$50,000,000.00. The trustee generally serves as the Bond Registrar and Paying Agent, who is responsible for the administration of the District's Bond Funds, including disbursement of construction funds, payment of principal and interest when due, and investment of funds at the direction of the District.



**SECTION 4:  
GUIDELINES AND RESOURCES FOR  
COMMUNITY ASSOCIATIONS IN COLLIER COUNTY**

## **COLLIER COUNTY GOVERNMENT WEB SITE**

The newly designed Collier County Government web site – <http://www.colliergov.net/> – is the central repository for all Collier County resources and services. Visitors to the site can easily obtain information on topics – literally – from A (Administrative Services) to Z (Zoning Maps), and everything in between. Numerous links to external sources are provided for those requiring more in-depth information on topics of interest.

We urge you to avail yourself of the convenience and efficiency that the web site offers. Many required forms and applications can be downloaded electronically, eliminating the need to travel to our office locations to conduct government business. Of course, should you prefer, our customer service staff is available for those who prefer or require direct assistance.

For the purpose of this manual, it would be impractical to present all topics in their entirety. The topics discussed below are abridged versions gleaned from the web site and represent a small sample of the information available to those accessing the site. Links are provided for those who wish further detail.

## **BOARDS AND COMMITTEES**

### **Board of County Commissioners**

The Board of County Commissioners is comprised of five members elected by districts within the County. Each elected term of office is for a term of 4 years. The Board is the chief policymaking body of Collier County, responsible for providing services to protect the health, safety, welfare and quality of life of the citizens of Collier County. Commissioners are responsible for approving County Government's annual operating budget and capital improvements program and for the appointment of a County Manager to carry out the Board's policies and manage the operations of County Government.

Regular meetings of the Board of County Commissioners are open to the public and are held the second and fourth Tuesdays each month, beginning at 9 a.m. Public petition speakers are limited to 10 minutes and general address speakers to 5 minutes. Meetings are also aired live on CCTV Channel 11/16 and recorded for evening replay.

The Commission Chambers and Commissioners' offices are located on the third floor of the W. Harmon Turner Building (F), Collier County Government Center, 3301 E. Tamiami Trail.

You can contact the BCC office at 774-8097 or via the Web at [www.colliergov.net/bcc](http://www.colliergov.net/bcc)

## **Collier County Planning Commission**

The Collier County Planning Commission is comprised of nine regular members appointed for a term of four years. The duties and responsibilities of the Commission are:

- To review proposed land development regulations, land development codes, or amendments and make recommendations to the Board of County Commissioners as to the consistency of the proposal with the adopted comprehensive plan.
- To conduct the comprehensive planning program and prepare the comprehensive plan or elements and to make recommendations regarding the adoption to the Board of County Commissioners.

In addition, the Commission may make or obtain special studies on the location, condition and adequacy of specific facilities of the area. These may include studies on housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, schools, public buildings, public and private utilities, traffic, transportation and parking.

The Commission meets on the first and third Thursday of each month at 8:30 a.m. in the Board of County Commissioners meeting room, third floor, W. Harmon Turner Building (F), County Government Center, 3301 Tamiami Trail East, Naples, Florida and are open to the public.

For further information, visit the Collier County web site at <http://www.colliergov.net/Index.aspx?page=1443>

## **Coastal Advisory Committee**

This nine member Committee was created on February 13, 2001 by Collier County Ordinance 2001-03 to assist the Board of County Commissioners with the establishment of unified beach erosion control and inlet management programs within the unincorporated and incorporated areas of Collier County and to advise the Board of County Commissioners and the Tourist Development Council (TDC) regarding project priorities with respect to funding sources that are available to Collier County for restoration and protection of its shoreline.

The Committee is comprised of three members from the unincorporated area of Collier County, three members from the City of Naples, and three members from the City of Marco Island. Selection for membership on this Committee will be based upon the applicant's familiarity with coastal processes, inlet dynamics coastal management programs, or demonstrated interest in such programs; relevant education and experience; leadership and involvement in community affairs; and willingness to attend meetings and to undertake and complete assignments. After initial appointments, terms will be four years.

Coastal Advisory Committee members meet monthly on the second Thursday of the month from 1:00 to 4:30 p.m. (please check the monthly agendas to confirm date and

time) in the Board of County Commission Chambers located on the third floor of the W. Harmon Turner Building (F), Collier County Government Center, 3301 East Tamiami Trail, Naples, Florida.

For further information, visit the Collier County web site at <http://www.colliergov.net/Index.aspx?page=1261>

## **Conservation Collier Land Acquisition Advisory Committee (CCLAAC)**

Conservation Collier is a taxpayer-funded initiative to acquire, protect, restore and manage environmentally sensitive lands within Collier County. To be considered for acquisition, properties must be offered by a willing seller and support at least 2 of the following qualities: rare habitat, aquifer recharge, flood control, water quality protection, and listed species habitat. The Program is funded through ad valorem taxes.

A nine-member Citizens Advisory Committee makes recommendations to the Collier County Board of County Commissioners, who make the final purchase decisions. Lands are managed to provide appropriate resource-based recreational and educational opportunities for the community.

The CCLAAC meets on the second Monday of each month at 9:00 a.m. in the Commissioner's Board Room, third floor, W. Harmon Turner Building (F), Collier County Government Complex, Naples, Collier County, Florida. The meetings are also televised live on the local government access channel 11/16.

## **Environmental Advisory Council**

The Land Development Code requires this appointed committee to act in an advisory capacity to the Board of Collier County Commissioners (BCC) on matters dealing with the regulation, control, management, use or exploitation of any or all natural resources within the County. The EAC is also required to review and evaluate specific zoning and development petitions with regards to their impact on natural resources.

The nine-member Citizens Advisory Committee is appointed by and serves at the pleasure of the BCC. The EAC meets regularly the first Wednesday of each month at 9:00a.m. in the Commissioner's Board room, third floor, W. Harmon Turner Building (F), Collier County Government Complex, Naples, Collier County, Florida.

The meetings are also televised live on the local government access channel 11/16. For more information, visit the Collier County web site at <http://www.colliergov.net/index.aspx?page=498>

## **Floodplain Management Planning**

The Floodplain Management Planning Committee was created on July 25, 2006, by Resolution No. 2006-200. This 23 member (10 members of the public) will promote awareness of floodplain and flooding issues, identify known flood hazards, discuss past

flooding events, assess the current floodplain and flooding issues, and set goals along with a strategy to make the community more resistant to flooding. They will also develop and at least annually evaluate and update the Collier County Floodplain Management Plan.

### **Development Services Advisory Committee**

This 15-member committee was created on 10/12/93 by Ord. No. 93-76, amended on 11/07/95 by Ord. No. 95-60 to add additional categories of industry membership representation. This committee represents the various aspects of the development industry such as architect, general contractor, residential or building contractor, environmentalist, land planner, land developer, landscape architect, professional engineer, utility contractor, plumbing contractor, electrical contractor, structural engineer, and attorney. The purpose of this committee is to provide reports and recommendations to the BCC to assist in the enhancement of operational efficiency and budgetary accountability within the Community Development Services Division and to serve as a primary communication link between the Community Development Services Division, the development industry and the citizens of Collier County. Terms are four years.

### **Post-Disaster Recovery Task Force**

This 22-member committee was created on 07/25/06, by Ord. No. 06-35 as required by Chapter 252, Florida Statutes to oversee the recovery and reconstruction process and to coordinate with the municipalities within the County and with the constitutional officers of the County, County efforts to identify opportunities to mitigate future damages through the management of recovery and reconstruction. To further this intent, the County will make every effort to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while, at the same time, ensuring maximum local control over the recovery and reconstruction process. Following a disaster, sufficient time shall be provided to conduct damage assessments, classify and categorize individual structural damage, and evaluate the effectiveness and enforcement of the existing building code. It is further the intent of the County to allow rebuilding and reconstruction in a safe and orderly manner by controlling the issuance of building permits, development orders, and site development plans in order to manage the location, timing, and sequence of reconstruction and repair while mitigating against future hazards.

## **OTHER COMMUNITY DEVELOPMENT DEPARTMENTS**

### **Building Review and Permitting**

The Building Review and Permitting Department is responsible for issuing all construction permits. Key responsibilities are customer information and professional review of building permit applications and plans. These reviews cover a variety of state laws and local codes which are designed to ensure life safety and energy efficiency as well as ensure compliance with structural, electrical, plumbing, mechanical, zoning,

handicapped, swimming pool, coastal construction, and flood zone regulations. This Department is also responsible for scheduling, performing, and recording the results of inspections for all structures under construction.

The following codes are currently in effect:

- 1999 Life Safety
- 2001 Florida Building Code
- 2001 Florida Building Code/Fuel Gas
- 2001 Florida Building Code/ Mechanical
- 1999 National Electric Code
- 2001 Florida Building Code/Plumbing
- 2002-01 Building Construction Administrative Code Ordinance
- 2001 Florida Building Code/Americans with Disabilities

The Contractor Licensing Section of the Building Review and Permitting Department issues licenses to County and State contractors and investigates unlicensed contractors and complaints of poor workmanship. They also provide services to the Cities of Naples and Marco Island.

For questions regarding testing and registration, please call 252-2431 or 252-2432 or via the Web, visit [www.colliergov.net/permitting](http://www.colliergov.net/permitting)

## **Department of Zoning and Land Development Review**

The Collier County Department of Zoning and Land Development Review provides services such as review of land use petitions including rezonings and variances; review of site plans; issuance of temporary use permits and zoning certificates; and front counter zoning information and assistance to the development community and the general public.

Contact Zoning & Land Development Review by phoning 252-2476 or via the web at [www.colliergov.net/zoning](http://www.colliergov.net/zoning)

## **Code Enforcement**

Code Enforcement is responsible for enforcing the codes and ordinances of the unincorporated area of Collier County. The Department includes daytime Investigators, evening Investigators, and weekend Investigators who are committed to protecting the public health, welfare and safety.

To report a violation of a county ordinance, contact Code Enforcement at (239) 252-2440. Please give the address where the violation is located and describe the violation and any other pertinent information. A case number will be provided to you when you call in so that you may call back and get a status report of your complaint. Anonymous complaints are accepted, however names and addresses are encouraged for follow-ups to be conducted. Or you can submit your violation report online at <http://209.247.187.111/Index.aspx?page=58>

Office hours are from 8:00 am to 5:00 pm, Monday through Friday. The Code enforcement office is located in the Community Development and Environmental Services Building at 2800 N. Horseshoe Drive, Naples, Florida.

## **Comprehensive Planning**

The Comprehensive Planning Department is responsible for the preparation and implementation of the Future Land Use Element, the Golden Gate Area Master Plan, the Immokalee Area Master Plan, and the Capital Improvement Element, Intergovernmental Coordination Element, Housing Element, Recreation and Open Space Element, Conservation and Coastal Management Element and Public Utilities Element of the Collier County Growth Management Plan which is the comprehensive long range plan required by the State of Florida. The Department also maintains and provide population, demographic, and economic information.

You can contact the Comprehensive Planning Department by phoning 252-2400 or via the web at [www.colliergov.net/planning](http://www.colliergov.net/planning)

## **Engineering Services**

The Engineering Services Department is responsible for the review of private development projects within Collier County to assure that all infrastructure development design complies in design with the Land Development Code, and that construction meets the approved plans and specification documents. This department is broken down into two subsections. The Plan Review Section is responsible for the review of all County land development projects to assure compliance with Land Development Code requirements. After the project plans are approved and the project enters the construction phase, the Engineering Inspection Section becomes involved and provides inspection services to assure that "quality" construction takes place in accordance with the approved plans and specification.

You can contact the Engineering Services Department by phoning the Engineering Main Phone Number - (239) 252-2400 - Fax Number: (239) 213-2916 – or via the Web at [www.colliergov.net/engineering](http://www.colliergov.net/engineering)

## **Environmental Services**

Environmental staff assists the general public in obtaining environmental permits associated with development, beach dune activities and other environmentally sensitive areas. Staff also reviews environmental aspects of site developments.

You can contact the Environmental Services Department by phoning 252-2400 or via the web at [www.colliergov.net/environmental](http://www.colliergov.net/environmental)

## **Programs and Services**

### **Invasive Exotic Plant Species**

Collier County is home to an estimated 70 exotic plants. Exotic plants are species that evolved in different ecosystems and have few native predators and diseases. The lack of native controls allows them to out-compete native plants altering the balance in native habitats. These plants often are unable to support the diverse wildlife community's common to Florida. For more information, visit the Collier County web site at <http://www.colliergov.net/Index.aspx?page=337>

### **Manatee Protection**

Collier County has been one of the fastest growing counties in the nation, with regard to population. Collier County is the southernmost population center on the west coast of peninsular Florida. It has been shown that as population increases in this county, there is a proportional increase in boat registrations. Boating related accidents are a major cause of manatee mortality. For more information, visit the Collier County web site at <http://www.colliergov.net/Index.aspx?page=351>

### **Sea Turtle Protection**

The Collier County Environmental Services Department (ESD) surveys 23.7 miles of beach daily for sea turtle activities between May 1st and October 31st of each year. In addition, the ESD also conducts monthly lighting inspections, documents and rescues stranded (i.e., injured or dead) sea turtles, documents disorientations, and writes the 'Sea Turtle Protection Plan Annual Report' available online at <http://www.colliergov.net/index.aspx?page=444> For further information about sea turtles, please call the Collier County Environmental Services Department at (239) 732-2505.

### **Watchable Wildlife**

A guide to viewing wildlife and wildlands in Collier County. For more information, visit the Collier County web site at <http://www.colliergov.net/Index.aspx?page=464>

### **Waterways Management**

The Collier County Environmental Services Department is responsible for maintaining and replacing private aids to navigation in smaller channels that are not maintained by the U.S. Coast Guard. We also provide interpretations of the County's Manatee Protection Plan for permit reviews and assist with local manatee research and coordinate the removal of derelict vessels throughout the County. The Environmental Services Department also attempts to promote a safe and environmentally sound use of the waterways of Collier County.



## **TRANSPORTATION**

### **Development Review**

Development Review serves as the liaison between CDES (Community Development Environmental Services Division) and TSD (Transportation Services Division). The section is responsible for the review of private development projects within Collier County to ensure that all transportation and storm water designs comply with county ordinances, codes, regulations, and appropriate local, state and federal laws.

### **Traffic Impact Statement**

#### *Annual Traffic PUD Monitoring Report*

After February 6 2003, all Planned Unit Developments (PUDs) which are less than 100 percent built out must annually submit a report detailing their progress toward build out of the development. The traffic report must be submitted as part of the annual PUD monitoring report on or before the anniversary date of the PUD's approval by the Board per Land Development Code (LDC) section 10.02.13.F. The written report must be submitted to and be in a format established by the County Manager or designee unless payment in lieu is provided pursuant to section 10.02.13.F and must indicate any revised estimates to the initial build out schedule and any resulting effect on traffic impact projections along with any progress towards completing any developer contribution requirements.

Traffic PUD Monitoring Reports which are more than ninety 90 days past due will result in the suspension of final local development order issuance for the PUD pending receipt of the Report. The county manager or designee may waive the traffic counts for the annual monitoring period for the entire PUD or portions of the PUD when the remaining un-built approved density or intensity produces less than 25 PM peak trips. The PUD owner(s) - the Developer, Home Owners Association, Master Association, or similar entity - may petition the Board of County Commissioners to relinquish the development rights to any un-built units and declare themselves built out in order to satisfy all reporting requirements. The applicant for a waiver or determination of built out status shall be responsible for any documentation required in order to verify the status of the PUD. The traffic reporting requirements are the responsibility of the entity that retains the remaining development rights to any un-built units or intensity.

### **Traffic Calming**

Traffic conditions on residential streets can greatly affect neighborhood livability. When our streets are safe and pleasant, the quality of life is enhanced. When traffic problems become a daily occurrence, our sense of community and personal well-being are threatened.

By addressing high vehicular speeds and cut-through volumes, traffic calming can increase both the real and perceived safety of pedestrians and bicyclists, and improve the quality of life within the neighborhood.

It is the goal of the Collier County Neighborhood Traffic Management Program (NTMP) to establish procedures and techniques that will promote neighborhood livability by mitigating the negative impacts of automobile traffic on residential neighborhoods.

## **SUNSHINE LAWS**

Open Meetings Law

286.011, F.S.

Found in Chapter 286 of the Florida Statutes, the Government-in-the-Sunshine Law establishes a basic right of access to most meetings of boards, commissions, and other governing bodies of state and local governmental agencies or authorities.

Florida's Sunshine Law applies when two or more members of the same elected or appointed public board or commission meet to discuss or take action on any matter which may foreseeably come before them in their official capacity. The Sunshine Law requires that: (1) meetings be open to the public; (2) notice be given; and (3) minutes be taken.

### **Application**

#### **Who else is covered?**

Members-elect of boards or commissions are also subject to the Sunshine Law. Private entities doing business on behalf of a public agency may also be subject to the law.

#### **Who is not covered?**

Staff meetings are not ordinarily subject to the Sunshine Law.

#### **What types of meetings are covered?**

The Sunshine Law applies to all functions of covered agencies, boards, and commissions, whether formal or informal, which relate to their affairs and duties. The Sunshine Law also applies when an individual has been delegated the authority to act on behalf of or make recommendations to a public entity. However, when an individual has only been delegated the authority to gather information, the Sunshine Law does not apply. The Sunshine Law prohibits meetings between a member of a public body and an individual who is not a member when that individual is being used as a liaison between, or to conduct a de facto meeting of, other members of the public entity.

#### **What types of meetings are not covered?**

The Sunshine Law does not apply to a meeting between individuals who are members of different boards unless one or more of them have been delegated the authority to act on behalf of his or her board. If an official is not a member of the board or commission and does not possess any power to vote, the official may meet privately with an individual member. There is no violation of the Sunshine Law for a board member to express views or voting intentions on upcoming issues to a reporter. Members of a public board or commission are not prohibited from meeting together socially under the

Sunshine Law, as long as matters which may come before them in their official capacity are not discussed.

### **What forms of communication are covered?**

Members of a board discussing board business or holding a meeting by telephone must ensure that the requirements of the Sunshine Law have been satisfied by providing notice and access to the public. If a memorandum reflecting the views of a board member is circulated among board members with each indicating his or her approval, disapproval, or comments, there is a violation of the Sunshine Law. The use of a written report simply to inform is not a violation of the Law as long as there is no reply or interchange of information. The use of computers by members of a public board or commission to communicate among themselves is subject to the Sunshine Law.

### **What subjects are covered?**

There is no exception to the Sunshine Law allowing closed-door hearings when a board or commission is acting in a "quasi-judicial" capacity. Discussions between a public board and its attorney are generally subject to the Sunshine Law. However, a public board and its attorney may meet in a closed session to discuss settlement negotiations or strategy concerning pending litigation to which the public board is a party. Numerous limiting conditions apply to such meetings, including transcription requirements, topic limitations, notice and procedural requirements, and release of the transcript upon completion of the litigation. Meetings at which personnel matters are discussed are not exempt. Negotiations by a public body for the sale or purchase of real property must be conducted in the Sunshine. The Sunshine Law is applicable to investigative inquiries of public agencies, and the fact that a meeting concerns alleged violations of law or regulations does not remove it from the scope of the Law. Sunshine Law policy on collective bargaining for public employees is divided into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Law.

### **What are the requirements for voting?**

A board may not use secret ballots. Each member present must cast a vote either for or against each proposal, but it is not necessary to take a roll call vote to reflect each member's specific vote. The minutes must report voting results either by recording the vote of each individual member or counting the votes and reporting the totals. No member of any governmental board or commission who is present at any meeting at which a decision, ruling, or other official act is to be taken or adopted must abstain from voting. A vote must be recorded or counted for each member present, except when a member has, or appears to have, any conflict of interest.

## **Requirements**

### **Meeting Locations**

Association boards are prohibited from holding their meetings at any facility which discriminates on the basis of sex, age, race, color, national origin, creed, religion, or economic status, or which operates in a manner that unreasonably restricts public access. Reasonable steps should be taken to ensure that meeting facilities will accommodate the anticipated turnout. Meetings should be held within reasonable proximity to the association and its members.

### **Public Attendance or Participation – Rights and Restrictions**

The public may not be deprived of the right to be present and to be heard at all deliberations where decisions affecting the public are being made. The board may adopt reasonable rules and policies ensuring the orderly conduct of a public meeting and requiring orderly behavior of those in attendance. A rule or policy prohibiting the use of non-disruptive cameras or silent tape recording devices is unreasonable and, therefore, invalid.

### **What kind of notice must be given?**

A written notice containing the time, place, and general subject of the meeting should be given. Notice should be published, posted, and/or circulated in a way meant to allow members of the association who may be interested to know about the meeting. If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting must also be noticed.

### **Must written minutes be kept of all public meetings?**

Yes. Minutes of an association meeting must be promptly recorded and open to public inspection. A written transcript of a meeting may be used as the minutes.

## **Penalties**

### **What are the penalties for violations of the Sunshine Law?**

No resolution, rule, regulation, or formal action is binding unless it is promulgated at an open meeting. A board member who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. If convicted, the officer or employee may be removed from office. Any public official who violates the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. Reasonable attorney's fees and court costs will be assessed against a public agency violating the Sunshine Law.

Additional information about the Sunshine Law, including answers to frequently asked questions, is available through the Office of the Attorney General's website, <http://www.myfloridalegal.com>

The Attorney General, in cooperation with the First Amendment Foundation, has prepared the Government in the Sunshine Manual which explains the law under which Florida ensures public access to the meetings and records of state and local government. Bound, unabridged copies of this manual can be obtained through the First Amendment Foundation at 850-224-4555. The Foundation's address is:

**First Amendment Foundation**  
**336 E. College Avenue, Suite 101**  
**Tallahassee, FL 32301**

## **WATER MANAGEMENT**

The Stormwater Management Department can be reached by calling 252-8192 or via the Web at [www.colliergov.net/stormwater](http://www.colliergov.net/stormwater)

### **Responsibilities for associations and members**

Whether their neighborhood is still under development or fully built out, residents of community associations can play an important role in averting costly infrastructure problems due to developer negligence. Federal rules promulgated under the Clean Water Act specify that construction site operators and owners have a legal responsibility to keep sediment and other pollutants from leaving the construction site and out of on-site preserve areas and storm sewer system components.

Storm sewer systems are installed early in a development's evolution. During the construction of homes that follows, the storm sewer system is extremely vulnerable to becoming clogged. Sediment eroding from unprotected lots, cement trucks washing their chutes into inlets, and other debris can partially clog storm sewers and make them far less functional in years to come. Once a pipe is partially blocked, other debris entering later is easily trapped and flooding results.

At a future time, the homeowners of the PUD inherit the responsibility of maintenance and repair of the storm sewer system; an expense that can be avoided. Preventing sediment and debris from entering inlets to storm sewers during construction is essential to avoiding problems later.

If you are a resident in a planned unit development (PUD) where construction is still underway, protect your investment and report conditions that threaten to clog your storm sewer pipes. It is illegal for a builder not to keep sediment and construction debris from leaving his construction site, and for a developer to leave curb inlets unprotected.

The County's site development inspection program includes periodic site visits to insure that construction site codes are being observed, including those that are meant to protect the storm sewer system. Let them know if you observe activities that may be compromising your storm sewer system. Call the Collier County Engineering Services Department at 252-2400.

## **Landscape Maintenance Practices Affect Your Neighborhood Pond**

It may seem trivial, but over time, grass clippings and sediment blown into storm inlets and into the pond will degrade the pond health and aesthetics, and contribute to eventual larger maintenance costs for the pond. Yard debris contains nutrients that damage the pond. If you contract with a landscape maintenance company you may need to remind them to keep the yard clippings out of the stormwater system.

Homeowner association officials should become familiar with the drainage system in their association and how it fits into the overall south Florida drainage picture. Specifically, understand how the system is designed to work, what all current permits entail, what level of protection is expected or provided, and how to properly maintain the facilities under the association's responsibility.

For additional information, visit the South Florida Water Management District web site at <http://www.sfwmd.gov> or phone 561-686-8800  
1-800-432-2045 (Florida Only)

## **EMERGENCY PLANNING**

For detailed information, visit <http://www.colliergov.net/Index.aspx?page=101> to access the Collier County All Hazards Guide 2006-2007.

### **Hurricane**

Despite the recent hurricanes that have recently visited Southwest Florida, most of us have never experienced the total devastation a hurricane can cause. Below are some of the major hurricane hazards that can threaten you.

### **Wind**

Hurricanes are categorized by sustained winds of 74 mph to 200 mph. Hurricane-force winds can sever power and communication lines. Winds in excess of 45 mph begin to damage traffic signals and topple trees.

Residents living on the upper floors of high-rise condos may experience much higher wind speeds. Roofs are damaged and windows are hit by flying projectiles. Mobile and manufactured homes generally experience greater damage and residents should evacuate.

### **Tornados**

Tornados may form in the rain bands of a hurricane and cause significant damage. Tornados are commonly found in the right front quadrant of the storm. These tornados are not as intense as those in the Midwest tornado belt, but they can inflict tremendous damage with little or no warning.

### **Storm Surge**

Storm surge is a dome of water that moves ashore near the hurricane eyewall. It has the potential to be a major killer if evacuation is inadequate. As the storm makes landfall,

tide levels of 4 to 25 feet may occur along the coastal areas and major rivers of Southwest Florida. This is enough to inundate most populated areas. Damage amounts depend on the hurricane's intensity, size and its direction of movement. Storm surge causes salt water flooding which cripples communications, causes sewers and storm water basins to back up and contaminates drinking water supplies. Storm surge flooding washes out roads and leaves streets filled with sand and debris.

## **Heavy Rain**

Over the past 30 years, freshwater flooding has caused more drowning deaths than storm surge flooding. Torrential rains associated with slow moving or stationary tropical weather systems can produce more than 40 inches of rain over a two-day time period. In addition to flooding residences and businesses, heavy rain can have a disastrous effect on agriculture interests by drowning crops and increasing the probability of disease and pest infestations in surviving crops. Insects, dead animals and sewage polluted water can create massive health problems.

### **HOW WILL I KNOW WHEN A HURRICANE OR TROPICAL STORM POSES A THREAT TO SOUTHWEST FLORIDA?**

Emergency Management personnel closely monitor tropical weather and are in frequent contact with the National Hurricane Center. The media provides frequent updates on the storm, as well as emergency protective actions recommended by the Emergency Operations Center.

As a hurricane or tropical storm moves closer to Southwest Florida, Emergency Operations Centers will be activated. The National Weather Service also broadcasts continually over NOAA Weather Service. Check with your local Emergency Management Office for the frequency that serves your area. Battery back-up, alarm activated NOAA Weather Radios are inexpensive and can be purchased locally. NOAA Weather Broadcasts are invaluable sources of "real-time" information during severe weather conditions.

### **WHAT AREAS ARE SUSCEPTIBLE TO HIGH WATER LEVELS CAUSED BY STORM SURGE?**

Storm surge can rise over 25 feet above normal tide levels in the Gulf of Mexico. Except for the areas of Immokalee, Lehigh Acres, eastern Sarasota County and the inland counties, a large percentage of Southwest Florida coastal residents live in areas just a few feet above sea level. Should a major land-falling hurricane strike Southwest Florida, many low-lying coastal areas would be flooded to varying depths by the storm surge and wave action, which accompany the storm. Tides of 3 to 4 feet above normal could occur as much as 12 hours before the "eye" of the storm reaches the coastline. Many of our coastal roads used as evacuation routes could be underwater well in advance of the storm, thus restricting their use as evacuation routes.

People living or working in coastal or flood prone areas should be prepared to evacuate and seek shelter inland as soon as a Hurricane Warning is announced. Evacuations should be completed early to avoid the high winds and heavy rain, which precede the storm's arrival. If you live in an area that is prone to flooding, either along the coast or

inland, you may be stranded without fire, law enforcement, or medical support until the floodwaters subside.

## **Insurance**

Most property owners have homeowners' coverage insuring them from catastrophic loss. Did you know that a typical homeowners' policy does not protect you from loss in flooding or rising water? Collier County qualifies and participates in the National Flood Insurance Program. We qualify by making building requirements stringent and in accordance with the Florida Building Code and local flood damage prevention ordinances. If you don't have flood insurance, check with your insurance agent for a price quote on your home and your furnishings. Don't wait until the hurricane warning has been issued. There is a 30-day waiting period before flood insurance becomes effective, unless you are a new home-buyer.

Make a checklist to assist in determining your insurance needs. Additional information can be obtained from your county emergency management office.

## **Before the Storm**

- **Make sure that you have adequate coverage**  
Property values have increased markedly over the past few years. Also, you may have made some improvements that increased the value of your home. Make sure that you review your insurance policy carefully and know your coverage limits. Consider increasing your coverage, if it is not adequate.
- **Check Your Policy for Flood and Windstorm Coverage**  
A standard homeowners' policy does not cover flood damage caused by rising water. If you live in a flood prone area, you should talk to your agent about obtaining flood insurance. Standard homeowners' policies usually cover windstorm damage caused directly from wind or hail. Check to be sure a windstorm exclusion has not been written into your policy. If you have questions about whether your policy covers windstorm damage, contact your insurance agent.
- **Contact Your Agent to Discuss Possible Policy Changes**  
Your insurance agent can provide information about rates and coverage and can assist you in making any necessary policy changes.
- **Know What Your Current Policy Does and Does Not Cover**  
Standard homeowners policies usually limit coverage on items such as valuable jewelry, art collections, and antiques. You may need additional coverage for them. If your home is 50% or more destroyed, it may cost more than your homeowner's policy will pay to build it back to CURRENT building and life safety codes, unless you have a "rider" added to it, which covers this contingency. Most homeowners' policies do not cover backup of septic tanks or sewers into your home, unless you have added a "rider" to your policy covering this type of flooding.



- **Update Your List of Personal Belongings**  
Make an itemized list of your belongings, their cost, dates of purchase, and serial numbers, if appropriate. Your insurance company will probably require proof of the cost of any item for which a claim is made. Photographs and/or videotapes are also good ideas that you may wish to consider.
- **Safeguard Your Records**  
Keep a copy of your insurance policies and inventory records in a safety-deposit box or with a relative or friend. If your property is damaged, it will be to your advantage to have access to this information. You may choose to take a copy with you if you evacuate.

## After the Storm

- **Beware of “Fly-by-night” Repair Businesses**  
Hire reputable and preferably local service people. They should have occupational licenses issued by either the City or the County. If you need a permit or want to know if your contractor is licensed or has had complaints registered, please phone the Contractor Licensing Section at 213-2909.
- **Report Damage to Your Insurance Agent Immediately**  
Your agent should provide you with claim forms and arrange for an insurance adjuster to visit your property and assess the damage.
- **Make and Document Emergency Repairs**  
Your policy probably requires that you make emergency repairs to prevent further damage to your home or contents. Keep all receipts and take photographs of the damage before and after emergency repairs to submit with your claim.
- **Take Precautions if the Damages Require You to Leave Your Home**  
Secure your property. Remove valuable items. Lock windows and doors. Contact your insurance agent and leave a phone number where you can be reached. These same precautions should be taken, if you are required to evacuate, before a storm.
- **Looting**  
Looting has occurred in many communities after a hurricane. Criminals may take advantage of the opportunity to enter evacuated homes and businesses. Local law enforcement agencies and, if necessary, the National Guard will do everything possible to minimize looting. Place jewels and valuables in a sealed freezer bag in your safety deposit box or take them with you when you evacuate.

## Flood

Because of the low land elevations and the high water tables over much of our area, flooding is likely to occur in some areas during summer showers and thunderstorms. A storm with a considerable amount of water volume in a short period of time will cause flooding in low-lying areas throughout the county even though the canal network and drainage ditches will alleviate some flooding.

Short-term street flooding is common after intense rainfall in the wet season (June-November). Roadside ditches and swales that gradually convey stormwater commonly stay wet for weeks or months during the wet season.

**Note: HOA residents**

Residents living in a development with a homeowners association (HOA) should first contact their HOA. Most private developments maintain their own drainage systems.

Many larger canals are operated and maintained by the Big Cypress Basin Board, but most smaller canals, and ditches along public roads are County maintained.

Call Collier County Road and Bridge Section (Hours Monday -Thursday 7:00-5:30) if you experience persistent street flooding, (i.e., flooding occurs frequently after an average rainfall) or water levels remain abnormally high longer than 48 hours after heavy rain or if you notice changes in the way stormwater drains in your area compared to previous years.

- Naples 417-6320
- Immokalee 657-2655

**Protective measures that need to be taken are broken down into four stages:**

- Preparatory Flood Warning
- Flood Warning
- During the Flood
- After the Flood

**1. Preparatory Flood Warning**

- Keep a stock of food that requires no cooking.
- Keep a first aid kit available.
- Keep your vehicle fueled.
- Consider purchasing flood insurance for your home and belongings
- Turn to radio or television or NOAA Weather Radio for flood warning.
- Obey warnings from officials, evacuate when notice is issued.
- Know your evacuation zone and route to a place of safety.
- Know what supplies to take with you.
- Shut off electricity and water to your home prior to leaving.
- Be cautious and avoid flood prone areas when leaving.

**Take These Steps to Reduce Property Losses**

- Move outdoor furniture and carry downstairs furniture to upper floors or higher locations.
- Sandbags can help slow down flood waters from reaching your possessions.

- Retrofitting, such as building floodwalls or elevating a structure is a way of minimizing loss due to flooding.
- Know what your current insurance policy does and does not cover. Coverage may be subject to change with certain improvements to your home and may require compliance to certain regulations.

## 2. Flood Warning

- Store drinking water in sterile, covered containers.
- Move valuable objects higher. Place them on shelves, tables and counter tops.
- Turn off electricity.

## 3. During the Flood

- Stay on higher ground.
- Do not drive on a flooded road.
- If your vehicle stalls, abandon it immediately and seek higher ground.
- Don't attempt to wade across a flowing stream that is above your knees.
- Don't allow children to play in standing water. It may be contaminated with chemicals or sewage.

## 4. After the Flood

- Do not eat fresh food that has come into contact with floodwater.
- Drink only bottled or previously stored water.
- Stay away from disaster areas. You may hamper rescue recovery operations.
- Do not handle live electrical equipment.
- Report downed power lines to the local law enforcement authorities.

Keep tuned to local radio and television stations for instructions on how to obtain medical care and emergency assistance such as water, food, clothing, shelter and further weather reports and conditions.

The County maintains drainage channels and ditches for storm water management purposes. The county's Stormwater Management Department maintains them on a regular basis. These drainage systems are vitally important and should be kept free of debris and litter. State law prohibits dumping in these waterways. Violations should be reported to your local Sheriff's Office.

For FEMA Flood map Information, call:

Unincorporated Collier	213-5858
City of Naples	213-5039
City of Marco Island	389-5020

## Contact Numbers

### Emergency – Dial 911

Emergency Hotline	311 or 239-774-8444
Sheriff	239-774-4434
Naples Police	239-213-4844

### Hospitals

Naples Community Hospital:	239-436-5000
North Collier Health Center (24 hours):	239-513-7000
Physicians Regional Medical Center:	239-348-4000
Physicians Regional Medical Center (CR-951)	239-354-6000
American Red Cross	239-596-6868

To register donations, volunteers and out of town supply sales, please call 239-530-6909.

### Clinics (Columbia Care)

North Naples	239-261-2122
East Naples	239-793-0424
Walk-In Clinic of Naples Medical Center	239-649-3333
Florida Family Care Medical Center	239-455-4104

### Utilities

FPL	800-468-8243
Comcast	239-793-3577
Time Warner	239-598-1104
Lee County Electric	800-599-2356
Embarq	800-339-1811

### Other

AAA Naples	239-263-0600
Coast Guard	239-261-7375
Emergency Road Service	800-365-0933
Florida Marine Patrol	800-342-5367
Naples Chamber of Commerce	239-262-6141
Naples City Hall	239-434-4717
Naples Post Office	239-262-5411

### Fire Departments

City of Naples	239-434-4853
East Naples	239-774-7111
Golden Gate District	239-455-1884
North Naples	239-597-3222

### Government

City of Naples	239-213-4900
Collier County Contractor Licensing	239-252-2432
Collier County Schools	239-659-1900
Collier County Security	239-774 8380

Trees down on County Property	239-774-8192
<b>Collier County Building Department</b>	
Collier County Utilities (Waste Pick-up)	239-732-2575
Dade County Information	888-311-DADE
Debris Removal	239-252-2380
Dept. of Insurance & Consumer Affairs	239-461-4000
Electrical	239-252-2490
Florida Highway Patrol	800-342-3557
Hotel Hotline	800-785-8252
Marco Island City Hall	239-389-5000
Marco Island Phone Bank	239-389-5050
Plumbing	239-252-2491
Structural	239-252-2427
Trash Collection	239-252-2380
Waste & Water Service	239-252-2380
WATER MAIN BREAKS	239-774-8573

## SHERIFF'S OFFICE

The Collier County Sheriff's Office (CCSO) is responsible for law enforcement throughout unincorporated Collier County. The office encourages community involvement in carrying out their responsibility and provides a number of programs where citizens can become involved. Also offered is a wide range of services designed to educate and protect all Collier County citizens and visitors.

Contact the Sheriff's Office at (239) 774-4434 or via the web at [www.colliersheriff.org](http://www.colliersheriff.org)

An entire listing of the CCSO's phone numbers can be obtained on our [phone numbers page](#).

### Locations

#### Main Location

Collier County Sheriff's Office  
3301 Tamiami Trail East, Bldg. J  
Naples, FL 34112

#### Substations

The Collier County Sheriff's Office has five substations throughout the county to serve its residents. Each substation is strategically located to provide an adequate number of deputies for patrol functions, investigative and administrative services. Many other services are provided through the substations, such as: Crime Prevention, Neighborhood Watch, Crime Scene, Property and Evidence and much more.

The Sheriff's Office jurisdiction covers diverse geographical areas: farming communities, high rise condominiums, residential and gated communities, rural/estates residential, agricultural, island and coastal, to name a few.

Substation Locations:

**District #1**

North Naples Substation  
776 Vanderbilt Beach Road  
Naples, Florida 34108  
(239) 597-1607  
Open 8:00 am - 5:00 pm

**District #2**

Golden Gate Substation  
4741 Golden Gate Parkway  
Naples, Florida 34116  
(239) 455-3121  
Open 8:00 am - 5:00 pm

**District #3**

East Naples Substation  
11121 Tamiami Trail East  
Naples, Florida 34102  
(239) 793-1844  
Open 8:00 am to 5:00 pm

**District #4**

Estates Substation  
11905 Oil Well Road (CR 858 - near Corkscrew Middle School)  
Naples, FL 34120  
(239) 304-3520  
Open 8:00 am - 5:00 pm

**District #6**

Marco Island  
990 North Barfield Drive  
Marco Island, Florida 34145  
(239) 304-5129  
Open 8:00am - 5:00pm

**District #7**

Everglades City Substation  
32020 Tamiami Trail East  
Everglades, Florida 34139  
(239) 695-2301  
Open 8:00am - 5:00pm

## **District #8**

Immokalee Substation  
112 South First Street  
Immokalee, Florida 34142  
(239) 657-6168  
Open 8:00 am to 10:00 pm

## **Jurisdiction**

The Collier County Sheriff's Office maintains jurisdiction over the public roadways of unincorporated Collier County. In community associations where the roads are privately maintained by the association, the county sheriff's jurisdiction may be restricted. For instance, the county sheriff can not enforce speeding infractions on privately maintained association roads. On the other hand, a sheriff may cite a driver for violations such as driving under the influence of alcohol.

## **Programs and Services**

### **Crime Prevention**

The Collier County Sheriff's Office Crime Prevention Section offers free residential and special event programs to Collier County residents, including:

- **Neighborhood Watch Training**  
Four 1 hour sessions conducted in your neighborhood that includes Neighborhood Watch Function and Organization, Home Security, Vehicle Security, and Personal Safety.
- **Specialized Training**  
Fraud Con Prevention, Sexual Assault Awareness, Internet and Identity Security
- **Home Security Survey**  
A representative of the Sheriff's Office will evaluate the security in and around your home and make recommendations concerning those areas that may need attention.
- **Special Event Programs**  
The McGruff Robot is available for appearances at business and community events as a way to interest children in prevention and safety.
- **Speakers for Clubs and Organizations**  
Members of the Crime Prevention Section are always available to speak to your club or organization on a wide range of safety, security, and prevention topics.

For more information, contact the Collier County Sheriff's Office Crime Prevention Section at (239) 793-9391 or e-mail [prevention@colliersheriff.org](mailto:prevention@colliersheriff.org)

### **Fraud Protection**

Each year, Florida residents lose millions of dollars to fraud, scams, and con games. Frauds and cons work only when unsuspecting people allow them to do so. The Sheriff's

Office recommends following a few basic guidelines to protect you from becoming a victim.

- Investigate! Make sure that you understand any plan, offer, program, or proposal. If necessary, seek legal advice.
- Take your time. Many scams will push you to act immediately trying to force you into making a mistake.
- Be skeptical of anyone who calls on the phone or comes to your door in an effort to sell something or asks for donations to a charity.
- All who solicit in Collier County are required to obtain a permit. You have the right to see that permit and, if they do not have one, do not deal with them.

## **Senior Services Unit**

The Collier County Sheriff's Office Senior Services Unit was created to educate the community on aging issues and prevent victimization. The Senior Services Unit provides citizens with an informal, sometimes anonymous, setting to discuss issues that may concern a senior. Staff members are trained to discuss such issues as fraud, theft and abuse. It is important to remember that Florida Law provides anonymity protection for the reports of a crime as well as any victim of elderly abuse.

### **Why Was It Formed?**

In the last decade, there has been marked growth in Southwest Florida's older population, with the greatest increase in people aged 85 or older. Unfortunately, most crimes committed against this age group are not reported. Many seniors do not report the crime because they are unaware or incapable of doing so.

### **The Senior Services Unit provides the following services to the community:**

- Provide 24-hour response to critical incidents involving senior citizens to prevent victimization.
- Review all incident reports/senior referral cards to determine the type of intervention needed.
- When necessary, initiate a criminal investigation report and refer the case to the appropriate units, bureaus, etc.
- The Senior Services Unit will conduct assessments for proper Interventions, and coordinate with other agencies/organizations to find the best resolution to protect the senior.
- Work with social services and criminal justice agencies to provide maximum benefit to the senior citizen.
- Provide information to Senior Citizens about resources available to improve their quality of life.
- Ensure that all records and files of seniors are kept confidential and consistent with applicable laws to protect them.
- Conduct crime prevention presentations for seniors to empower them in reducing victimization and the fear of crime.



- Educate the community on protecting seniors and the laws set forth for their protection by Florida Statutes. (i.e., Healthcare providers, Public Safety Agencies, Hospitals, Assisting Living, Nursing Homes, etc.)
- Work with the Collier County TRIAD-S.A.L.T. Council to implement, programs, projects, events, etc., to enhance services for seniors.

You can contact Senior Services by phoning the Senior Help Line at 793-9468 (in an emergency, call 9-1-1) or via the web at <http://www.colliersheriff.org/Index.aspx?page=1961>

## **Fingerprinting**

The Collier County Sheriff's Offices provide free fingerprinting on Tuesdays and Thursdays from 12:00 (Noon) to 4:00 pm. This service is performed at the CCSO Main Office, County Government Complex, Bldg-J, in the jail lobby. This service is provided to anyone needing fingerprints for job applications, security clearances, or personal records.

For further information, visit <http://www.colliersheriff.org/Index.aspx?page=1989>

## **ENVIRONMENTAL**

<http://www.colliergov.net/Index.aspx?page=1111>

<http://www.regionalconservation.org/beta/nfyn/>

## **Sea Turtles**

### **Lighting Compliance**

During sea turtle season (May 1 to Oct. 31), lights illuminating the beach can disrupt nesting and hatching. Collier County's monitoring data has shown that adult sea turtles nest more frequently on dark beaches than lighted beach areas. Lights shining on the beach have also been found to cause hatchlings to disorient and crawl towards the light source, away from the Gulf. Disoriented hatchlings often end up in swimming pools, parking lots, and roads. Lost sea turtles are more likely to dehydrate or become depredated by raccoons, foxes, ghost crabs, ants, or birds

In accordance with the "Collier County Sea Turtle Protection Regulations" (Land Development Code Sec.3.10, 1994), the Collier County Environmental Services Department (CCESD) developed a program to minimize the damages caused by light pollution. The program is composed of an annual mail-out prior to season, night lighting compliance inspections, violation notices, and enforcement action. Prior to nesting season, a sea turtle information package is sent to beach front property owners, managers, and renters. The information package illustrates the importance of shielding

or turning off lights during sea turtle nesting season, and suggests inexpensive methods of reducing and minimizing beach lighting. Lighting compliance inspections are conducted by CCESD staff semimonthly throughout sea turtle nesting and hatching season. Light sources that create a visible shadow on the beach are considered a violation. When a light violation has been identified, efforts are made to work with the management to correct the problem. Any violations not corrected are turned over to Collier County's Code Enforcement Department for formal action.

You can help to reduce sea turtle disorientations during sea turtle season (May 1-October 31) by paying attention to the following:

- Outside lights that can not be turned off for safety reasons can be temporarily shielded with foil or painted with black heat resistant oven paint on the beach-facing side.
- Low wattage yellow lights (preferably low pressure sodium vapor lights) are less attractive to the turtles and are good replacements for white lights. (25 watt bug type)
- Closed blinds and curtains can shield bright interior lights that would normally shine on the beach.
- Shadow test your lights! If you can see your shadow while standing on the beach at night, the light is too bright.
- Inform your property manager if you notice lights that are too bright.

The following steps can be taken to reduce interference with sea turtle nesting and hatching activities.

- If you find a dead or injured sea turtle, please immediately notify the Florida Fish and Wildlife Conservation Commission (1-888-330-7370) or \*FWC (mobile phone). In Collier County, please page (239) 890-6486 and leave your number.
- If you witness a turtle crawling out of the ocean or digging a nest, remain quiet and at a distance. Movements and noises can easily frighten away a female turtle.
- Don't use flashlights on the beach at night. Lights deter turtles attempting to nest.
- If you live near the beach, shield lights that face seaward or turn off unnecessary lighting.
- Never stop a turtle that is returning to the water.
- Do not interfere with hatchlings heading for the water, this can weaken them and increase mortality.

Contact the Florida Fish and Wildlife Conservation Commission (1-888-330-7370) if you witness any situation that may interfere with sea turtle activities.

## **Red Tide**

Visit <http://www.colliergov.net/Index.aspx?page=1610> for more information on red tide.

To report dead fish or red tide symptoms, please call the Collier County Pollution Control and Prevention Dept. at (239) 732-2502. To speak to a health professional anytime, toll free, call the Florida Red Tide Health Hotline at 1-888-232-8635. For more information on red tide outbreaks in other areas of Florida, contact the Florida Fish and Wildlife Research Institute (FWRI) at (727) 896-8626 or visit their web site at <http://www.floridamarine.org/>

Collier County Red Tide Updates are also available on the Red Tide Hotline at (239) 732-2591. This is an automated recording with the most recent red tide information for Collier County available 24 hours a day, 7 days a week. The Red Tide Hot Line also offers information on what Red Tide is and its effects on Health.

## **Landscaping**

### **Tree Selection and Planting**

#### **Choosing The Right Tree**

Your selection of a tree should be based on the location of the property in relation to property near the coast or in the coastal zone. Areas east and north of US 41 are slightly cooler than the coastal zone. Areas east of Airport Road experience even cooler temperatures. Therefore, it is recommended that temperature hardy species of trees are planted according to their location in Collier County.

#### **Right Tree In The Right Place**

- Coastal Tolerant (West of US 41): Buttonwood, Sea Grape, Royal Palm, and Gumbo Limbo.
- Marginally Coastal (East and North of US 41): Live Oak, Mahogany, Royal Palm, and Bald Cypress.
- Cold Tolerant (Eastern Collier): Bald Cypress, Live Oak, Red Maple, Slash Pine, Cabbage Palm, and Magnolia.

For a complete list of native trees and shrubs of Collier County by zone, visit the County's website: [www.colliergov.net](http://www.colliergov.net) or contact the Department of Zoning and Land Development Review at (239)-213-2926.

## **Waste Management**

### **Hazardous Waste**

How household hazardous waste is handled can affect everyone. Improper storage of chemicals in the home can prove harmful to children or pets and be a fire hazard. Chemicals poured down the drain pollute the drinking water and can contaminate septic

tanks or waste water treatment facilities. When thrown in the trash, some household hazardous waste could harm sanitation workers.

Collier County residents can dispose of hazardous waste free of charge by bringing it to Collier County's Household Hazardous Waste Center, at the Naples Landfill. Items are accepted Tuesday - Friday, 12 p.m. - 1 p.m., and on Saturdays, 8 a.m. - 12 p.m.

Items not accepted:

- Bio-Hazardous Waste
- Flares & Ammunition
- Pressurized Gas Cylinders
- Limited household hazardous waste items are also accepted at the Naples and Marco Island Recycling Centers.

## **Electronics Recycling**

Electronics can be recycled curbside by calling 252-2380, 48 hours prior to set out or by bringing all unwanted electronic items either to our Naples Recycling Center, the Marco Island Recycling Center or Carnestown Recycling Center.

Items such as computers, monitors, keyboards, printers, scanners, televisions, telephones, cell phones, pagers, fax machines, copiers, stereos and radios may contain hazardous waste (including lead, mercury, and cadmium). Recycling reduces the amount of hazardous waste that ends up in the waste stream, and saves precious landfill space.

The Collier County Solid Waste Management Department held its first electronics round-up event on November 16, 2001. Since then 350,000 pounds of electronic equipment has been collected and diverted from the landfill. All electronic devices collected are reused, de-manufactured, or recycled in the State of Florida.

## **Disposal Facilities**

### **Collier County Solid Waste Management Department**

3301 E. Tamiami Trail  
Naples, Florida 34112  
(239) 732-2508  
8 am - 5 pm Monday - Friday

### **Marco Recycling Center**

Elkcam Circle  
Marco Island, Florida 34145  
(239) 394-2134  
8 am - 12 pm Tuesday-Saturday

### **Carnestown Recycling Center**

US 41 and SR 29

(239) 695-4331  
8 am - 5 pm Monday and Saturdays

**Naples Recycling Center**

2640 Enterprise Ave. Extension  
Naples, Florida 34104c  
(239) 643-3099  
8 am - 5 pm Tuesday - Saturday

**Immokalee Transfer Station**

700 Stockade Rd  
Immokalee, Florida 34116  
(239) 455-8062  
8 am -5 pm Monday - Saturday

**Collier County Naples Landfill**

CR 951 and Landfill Road  
Naples, Florida 34116  
(239) 455-8062  
7 am - 5 pm Monday - Saturday  
Closed Thanksgiving, July 4<sup>th</sup>, and Christmas.

For additional information call our 24-hour Public Utilities Division Hotline at 239-252-2380, press option 2, or; Collier County Solid Waste Management Department at 239- 732-2508

## **DEVELOPMENT**

### **Planned Unit Development (PUD)**

A "planned unit development" (PUD) is typically a property which includes a variety of housing options - detached homes, townhouses, and apartment units in the same community as well an owners' association to represent homeowners. Larger PUDs can include residential, shopping, offices and industrial areas, while smaller developments are typically limited to residential properties.

Applications for rezoning to PUD shall be in the form of a PUD master plan of development and a PUD document. The plan shall have been designed by an urban planner who possesses the education and experience to qualify for full membership in the American Institute of Certified Planners; and/or a landscape architect who possesses the education and experience to qualify for full membership in the American Society of Landscape Architects, together with either a practicing civil engineer licensed by the State of Florida, or a practicing architect licensed by the State of Florida. Prior to the submission of a formal application for rezoning to PUD, a pre-application meeting shall be held with the Zoning Department and other county staff, agencies, and officials involved in the review process.

## **Application Requirements**

The applicant shall submit data supporting and describing the application for rezoning to PUD in the form of a PUD document. The PUD document shall be submitted in both an electronic version and printed version in a format as established by the Zoning Department. (Refer to the PUD application and pre-application meeting notes for complete submittal requirements and associated fees).

## **Prehearing Conference**

Prehearing conferences may be held between the applicant and/or his representatives and officials or representatives of the County prior to advertisement of the hearing date. The purpose of such prehearing conferences shall be to assist in bringing the application for rezoning to PUD as nearly as possible into conformity with the intent of these or other applicable regulations, and/or to define specifically any justifiable variations from the application of such regulations.

## **Hearing before the Planning Commission**

Public notice shall be given and a public hearing held before the Planning Commission. Both the notice and the hearing shall identify the application, by name and application number and proposed PUD master plan of development. The Planning Commission shall make written findings as required in LDC Section 10.02.08 and shall recommend to the Board of County Commissioners either approval of the PUD rezoning as proposed; approval with conditions or modifications; or denial.

## **Action by the Board of County Commissioners**

Unless the application is withdrawn by the applicant or deemed "closed" pursuant to LDC Section 2.03.06, the Board of County Commissioners shall, upon receipt of the Planning Commission's recommendation, advertise and hold a public hearing on the application. The Board shall either grant the proposed rezoning to PUD; approve with conditions or modifications; or deny the application for PUD rezoning.

If approved by the Board of County Commissioners, the master plan for development, the PUD document, and all other information and materials formally submitted with the petition shall be considered and adopted as an amendment to the zoning code and shall become the standards for development for the subject PUD.

For application forms and further information, visit  
<http://www.colliergov.net/Index.aspx?page=819>

## **PUD Monitoring**

PUD Monitoring is responsible for creating, distributing, reviewing and assisting various agencies with the annual reporting responsibilities required by the Collier County Land Development Code, Section 10.02.13.F. The Monitoring Section oversees the tracking, submittal of, and compilation of the data provided by the Planned Unit Development (PUD) Annual Monitoring Reports and the notification of the entities charged with providing that data. Additionally, the department serves as the point of

contact for Homeowners Associations, serving as a liaison during the turnover process and by providing educational programs and acting as an educational resource to our community associations.

The primary goal of the Monitoring Section is to ensure and verify that all developer commitments have been met and that the developments have been constructed within the approved densities or intensities. A secondary responsibility is to act as a resource center for Collier County's community associations.

## **Neighborhood Informational Meeting (NIM)**

LDC 10.03.05.F Public participation requirements for rezonings, PUD amendments, conditional uses, variances or parking exemptions.

### **Rezoning, PUD Amendment, Conditional Use Requirements**

Applicants requesting a rezoning, PUD amendment, or conditional use approval must conduct at least one Neighborhood Informational Meeting ("NIM") after initial staff review and comment on the application and before the Public Hearing is scheduled with the Planning Commission.

### **Notice of Meeting**

Written notice of the meeting shall be sent to all property owners who are required to receive legal notification from the County pursuant to LDC Section 10.03.05.B. Notification shall also be sent to property owners, condominium associations, and civic associations whose members are impacted by the proposed land use changes and who have formally requested the County to be notified. A list of such organizations must be provided and maintained by the County, but the applicant must bear the responsibility of insuring that all parties are notified. A copy of the list of all parties noticed, and the date, time, and location of the meeting, must be furnished to the Zoning Department and the Office of the Board of County Commissioners no less than ten days prior to the scheduled date of the Neighborhood Informational Meeting.

### **Location of Meeting**

The applicant must make arrangements for the location of the meeting. The location must be reasonably convenient to those property owners who are required to receive notice and the facilities must be of sufficient size to accommodate expected attendance.

### **Advertisement of Meeting**

The applicant must further cause a display advertisement, one-fourth page, in type no smaller than 12 point and must not be placed in that portion of the newspaper where legal notices and classified advertisements appear stating the purpose, location, time of the meeting, and legible site location map of the property for which the zoning change is being requested. The advertisement is to be placed within a newspaper of general circulation in the County at least seven days prior to, but no sooner than five days before, the Neighborhood Informational Meeting.

## **Meeting Presentation**

The Collier County staff planner assigned to attend the pre-application meeting must also attend the Neighborhood Informational Meeting and shall serve as the facilitator, however, the applicant is expected to make a presentation of how the subject property is to be developed. The applicant is required to audio or video tape the proceedings of the meeting and to provide a copy of same to the County.

## **Record of Proceedings**

As a result of mandated meetings with the public, any commitments made by the applicant shall be reduced to writing and made a part of the record of the proceedings provided to the Zoning Department. These written commitments will be made a part of the staff report to the County's appropriate review and approval bodies and made a part of the consideration for inclusion in the conditions of approval of any applicable development order.

## **Neighborhood Informational Meeting Requirements for Variance and Parking Exemption**

Any applicant requesting variance approval or parking exemption approval must provide documentation to the Zoning Department indicating that property owners within 150 feet of the subject site have been advised of the extent and nature of the variance or parking exemption requested within 30 days of receipt of a letter indicating that the application is sufficient.

Where it has been determined that there is a property owner, functioning condominium, or civic association which has made formal request of the County to be so notified, then the applicant must provide written documentation to the Zoning Department indicating that such property owner or organization has also been notified concerning the extent and nature of the variance or parking exemption requested. The applicant must provide a written account of the result of such notice and shall submit any and all written communications to the Zoning Department. A list of property owners, homeowner, or condominium associations notified and any other written communications must be submitted to the Zoning Department at least two weeks prior to the scheduled date of the first advertised public hearing.

## **Municipal Service Taxing Unit**

A Municipal Service Taxing Unit (MSTU) is a funding mechanism for community members to create, through approval of the Board of County Commissioners, a special taxing district to make improvements to their neighborhood and/or community.

Collier County Alternative Transportation Modes Department oversees the administration of the MSTU's. The MSTU's have advisory committees comprised of community members within the MSTU boundary and appointed by the Board of County Commissioners. These committees meet monthly to discuss and approve capital projects consistent with the Purchasing policies. These monthly meetings are publicly noticed. All of these committees are regulated by the Sunshine Law and must follow the Collier County policies and procedures.



All capital projects as well as the maintenance of the projects are managed by project management staff of Alternative Transportation Modes. The funding is created through a mileage rate set by the ordinance in which it is created.

MSTU capital projects may include, but are not limited to:

- Drainage improvements
- Sidewalk construction
- Road improvements
- Landscape Beautification
- Decorative lighting

### **Good to know...**

In order to create a Municipal Service Taxing Unit (MSTU) for your neighborhood or community area, the Collier County Citizen Public Petition Process (CCCPPP) booklet has been developed for your reference. [Click here](#) to view.

## **PERMITS AND PETITIONS**

### **Development of Regional Impact (DRI)**

Where a proposed use or development is a development of regional impact (DRI), it shall meet all of the requirements of Chapter 380, Florida Statutes as amended, prior to the issuance of any required County development orders or permits and commencement of construction or development. Submission of the application for development approval (ADA) for a DRI is encouraged to be submitted simultaneously with the submission of any rezoning and/or conditional use application or other applicable land use petition required by the Collier County Land Development Code to allow for concurrent reviews and public hearings (when possible) before both the Planning Commission and the Board of County Commissioners.

Due to the longer review time frames associated with a DRI review process, a developer may, during the DRI pre-application process, seek approval from Collier County to submit the ADA for the DRI prior to the submittal of the rezone, conditional use, and/or other applicable land use petition. The DRI and rezone and/or conditional use shall be approved prior to the issuance of any required County development orders or permits and commencement of construction or development. However, a developer may enter into a written preliminary development agreement (PDA) with the State land planning agency to allow the developer to proceed with a limited amount of the total proposed development, subject to all other governmental approvals and solely at the developer's own risk, prior to the approval of the DRI, rezone, conditional and/or other applicable land use petition.

Application forms pertaining to DRI can be found by visiting <http://www.colliergov.net/Index.aspx?page=819>

## **Building Permits**

Before construction activity commences, building permits must be obtained from the Collier County Building Review and Permitting Department. Building permits issued must meet the requirements of the Florida Building Code, the Collier County Land Development Code, and the Collier County Code of Laws and Ordinances.

For information on permitting procedures, forms, and application instructions, visit <http://www.colliergov.net/Index.aspx?page=31>

## **Landscape Tree Removal for Cultivated Landscapes**

All trees planted within Collier County are protected and are a valued resource by our citizens. All commercial and residential developments will require a permit with the exception of a single family residence. While a permit is not required to remove trees located on a single family zoned property, a minimum number of code-required trees must be maintained on these sites. Please refer to “Collier County Landscape Requirements for Homeowners.”

If your residence is covered under a Homeowners Association (HOA) or Master HOA, consult with your association representatives before any tree removal, relocation, or replanting.

### **Criteria for removing trees**

When evaluating tree removal applications, the County will consider if properly maintained tree(s) are causing damage to structures, utilities, or are causing other site-specific damage or hazards. (Note: Trees are required to be properly maintained by canopy pruning and, in some situations, root pruning.)

### **Application Procedures**

If you are part of a HOA or Master HOA, the application must be submitted by the HOA. The following documents must be submitted:

- Application
- Addressing Checklist, signed by the Addressing Department
- Approval letters from the Homeowner and Master Homeowner Association within the development
- Plan, layout, or sketch that locates the tree(s) covered under the application. (Typically, landscape plans may be obtained from the Records Department located at the Community Development Building at 2800 North Horseshoe Dr.).
- Photographs of specific tree related problems or damage
- Professional recommendation from arborist, urban forester, or landscape architect, if available.
- Proof of ownership
- Processing fee

### *Additional Information*

- There is a limit of ten (10) trees per application and per development for a five-year period.
- If a larger number of trees need to be removed, a revision to the approved Site Development Landscape Plan must be submitted. This is done through the Site Development Plan Insubstantial Change (SDPI) process.
- All properties must maintain code minimum landscaping.
- Trees within any perimeter landscape will most likely require a revision to the approved Site Development Landscape Plan. This process is also done through the SDPI process.

## **Vegetation Removal Permit**

Before beginning any invasive exotic plant removal project, please contact the Collier County Environmental Services Department at (239) 732-2505 to find out if a Vegetation Removal Permit is required.

In general, a permit is required:

- For removing native vegetation from non-agricultural land;
- To remove non-planted landscaping due to diseased trees, damage to structure, or safety hazard
- To clear in addition to one acre for single family lots after obtaining a building permit;
- To clear native vegetation in order to construct a perimeter fence;
- To remove landscaping due to diseased trees, damage to structure, or safety hazard;
- To clear for an approved accessory structure on single-family zoned lots;
- To clear native vegetation in order to gain access to undeveloped property for subsurface soil boring testing;
- To clear exotic vegetation by mechanical means.

## **Remodeling**

### **Hiring Licensed Contractors**

Contracting for home improvements and storm repairs can pose many difficult problems if you are not careful. Generally, a contractor's license is required for any structural additions, roofing, air conditioning, plumbing, electrical/alarm work, pool/spa work or any job which requires a building permit. Ask to see the contractor's certificate of competency issued by the state or Collier County.

Article III, Chapter 22 of the Code of Laws & Ordinances for Collier County and Chapter 489 of the Florida Statutes requires that contractors be licensed. The Collier County Building Review and Permitting Department Contractor Licensing Section regulates licensed contractors and prosecute unlicensed contractors. The Contractor Licensing Section can inform you whether your potential contractor is licensed and investigate building code complaints you may have against a contractor.

If you have questions regarding testing or registration of contractors in Collier County, please call:

- (239) 252-2431
- (239) 252-2432
- (239) 213-2909

Further information on hiring licensed contractors can be found by visiting <http://www.colliergov.net/Index.aspx?page=1542>

## **COLLIER COUNTY ORDINANCES**

Visit <http://www.municode.com/Resources/gateway.asp?pid=10578&sid=9> to view all Collier County Ordinances.

### **Street Name Change Request**

Collier County Ordinance No. 2003-14 states that anyone wishing to rename a County street must submit a petition of fifty percent plus one of the property owners abutting the street to be renamed. The proposed name may not duplicate an existing name. Applicants must verify with the Addressing Section of the Community Development and Environmental Services Division (239-252-2482) that the proposed name is not a duplicate prior to submitting the application. The application should be forwarded with a cover letter describing the proposed change to Collier County Department of Zoning and Land Development Review, Application Processing, Community Development Services, 2800 North Horseshoe Drive, Naples, FL 34104.

#### **Application Requirements**

- A petition signed by fifty percent plus one of the property owners abutting the street to be renamed. (A list of property owners should be obtained from the Collier County Property Appraisers Office.)
- A site plan of the street to be renamed, showing the length of the street in tenths of miles, the location and number of street signs, and the zoning of abutting properties.
- The legal description, including section, township, range, and subdivision (as applicable), of the abutting properties.
- The reason for requesting the change.
- Electronic copy of all documents and plans.
- Applicable fee in accordance with the current fee resolution.

For application forms and further information, visit <http://www.colliergov.net/Index.aspx?page=819>

### **Swimming Pools – Public**

Swimming pools are common amenities in community associations throughout Collier County. The health and safety concerns regarding the operation and maintenance of swimming pools are addressed through County ordinance as well as the County Health Department.

The Collier County Health Department has published a **Swimming Pool Operators Manual** to provide swimming pool operators with a basic working knowledge of water balance, sanitation, and filtration and circulation, as well as the requirements of state laws for maintaining safe and healthy public swimming pools. The document can be viewed and downloaded by visiting

[http://www.doh.state.fl.us/chdcollier/pdf/pool\\_operators%20manual\\_2001.pdf](http://www.doh.state.fl.us/chdcollier/pdf/pool_operators%20manual_2001.pdf)

Florida Administrative Code (FAC) defines a public pool as one which meets the following criteria:

- serving five or more living units (separate buildings);
- serving cities, counties, and other institutions;
- a watertight structure filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment.

The FAC also details specific engineering and design criteria for the construction of a public pool.

The Collier County Health Department's Environmental Health and Engineering staff is available to assist in ensuring the health and safety of the general public who use public swimming pools. The health department will conduct unannounced inspections of public swimming pools (including water sampling) at least two times per year but not more frequently than four times per year for each pool. A fee of \$180.00 shall be charged annually by the health department for the pool water sampling and analysis.

Any pool, on inspection, that is found to be in violation of the Florida Administrative Code, Chapter 64E-9, or that is creating a public health hazard shall be closed by the health department until corrections are made and such corrections are verified by a re-inspection.

Copies of the complete FAC, chapter 64E-9 can be obtained from our office for a nominal fee or from the Florida Department of Health Internet website.

<http://www.doh.state.fl.us/Environment/water/swim/pdfs/64e-9.pdf>

## **Collier County Irrigation Ordinance**

Collier County depends on water - from the ecosystems of the Everglades to the quality of life that we expect and enjoy. Water conservation - meaning not only reduction in consumption, but also the effective and efficient use of water - protects the valuable water resources of Collier County. The protection of water resources is in the best interest of, and for the long-term protection of, the health, safety, and welfare of the residents and visitors to Collier County.

The Collier County Irrigation Ordinance (Ordinance 2002-17), was enacted in April 2002, and limits the use of certain water sources for irrigation. Waters limited by the ordinance include:

- water from the Collier County Public Water Supply System
- water from lakes, ponds, and natural or artificial watercourses
- water from public or private wells.

Waters exempted from the ordinance include:

- the use of Reclaimed Water for irrigation
- the use of saltwater for irrigation
- the use of low volume irrigation systems
- the use of low volume mobile equipment washing
- water use authorized by a specific consumptive use permit.

## **Irrigation Schedule**

### *Odd Numbered Addresses*

Water between midnight and 8:00 a.m. on Monday, Wednesday, and/or Saturday. Low volume hand watering is allowed between 5:00 p.m. and 7:00 p.m.

### *Even Numbered Addresses*

Water between midnight and 8:00 a.m. on Tuesday, Thursday, and/or Sunday. Low volume hand watering is allowed between 5:00 p.m. and 7:00 p.m.

### *All Other Outdoor Water Uses*

Car, truck, boat, and other vehicle washing, and exterior home surfaces: Allowed anytime with the use of low volume pressure cleaning equipment, low volume mobile washing equipment, or a single hose with an automatic shut-off nozzle. Water used for car, truck, boat, and other vehicle washing must run to a grassy, permeable surface.

### *New Landscaping*

Landscaping in place less than 60 days may be watered 5 days per week, Monday through Friday, from 12:01 a.m. to 8:00 a.m. Low volume hand watering is allowed anytime.

### *Irrigation System Maintenance*

Existing irrigation systems may be operated for maintenance a total of 10 minutes per zone per week. New irrigation systems may be operated 30 minutes per zone one time only. In any case, during operation for maintenance, a person must be present and working on the system during such operation.

### *Rain Sensor Requirement*

All irrigation systems shall be equipped with a properly installed rain sensor switch. Rain sensor switches prevent irrigation systems from running when it is raining, or when it has recently rained. Rain sensor switches are required to be installed on all new irrigation systems, and shall be retrofitted on existing systems by April 2003. The rain sensor switch shall be maintained in fully operational condition at all times by the owner/operator of the system.

For more information concerning Collier County's Irrigation Ordinance, call Utility Billing and Customer Service at (239)-252-2380. To report a drinking water quality problem, a drinking water service problem, or to report a drinking water-related emergency, please call the Water Department at (239)-530-6245.

## **Rental Registration Ordinance**

Collier County Ordinance Sec 22-264 requires that every dwelling unit that is rented in Collier County must be registered with Code Enforcement. Rental dwellings are registered per folio number. The initial registration fee is \$30 (per unit) and is renewed on a yearly basis. The renewal fee is \$20 and is due by June 30th each year. Late fees in the amount of \$10 per day are charged for any rental renewal made after the deadline.

Property owners that do not register in a timely manner may also be required to appear before the Code Enforcement Board or Special Master. If found in violation of the Rental Registration Code, there may be administrative fees assessed in addition to any late fees that have accrued.

For information and frequently asked questions on the Collier County Rental Registration Program, please visit

[http://apps.colliergov.net/COMMDEV/rental\\_reg/default2.cfm](http://apps.colliergov.net/COMMDEV/rental_reg/default2.cfm)

## **CONTACT INFORMATION**

### **Telephone Numbers**

**(Area Code 239)**

#### **COMMUNITY DEVELOPMENT DIVISION**

<b>COA</b>	<b>252-2924</b>
<b>Code Enforcement</b>	<b>252-2440</b>
<b>County Attorney – CDES Division</b>	<b>213-2939</b>
<b>Engineering</b>	<b>252-2400</b>
<b>Environmental</b>	<b>252-2400</b>
<b>Housing and Urban Improvement</b>	<b>252-2330</b>
<b>Fire Code Review</b>	<b>252-2498</b>
<b>Impact Fee Information</b>	<b>213-2924</b>
<b>Inspections Hot Line</b>	<b>643-9757</b>
<b>Zoning</b>	<b>252-2400</b>

#### **OTHER COLLIER COUNTY AGENCIES**

<b>Airport Authority</b>	<b>642-7878</b>
<b>Board of County Commissioners</b>	<b>774-8097</b>
<b>County Manager's Office</b>	<b>774-8383</b>
<b>Domestic Animal Services Department</b>	<b>530-7387</b>
<b>MPO</b>	<b>774-8192</b>
<b>Pelican Bay Services District</b>	<b>597-1749</b>
<b>Pollution Control</b>	<b>732-2502</b>

<b>Parks and Recreation</b>	<b>353-0404</b>
<b>Public Library</b>	<b>593-0334</b>
<b>Right of Way Inquiries</b>	<b>659-5767</b>
<b>Solid Waste Department</b>	<b>732-2508</b>
<b>Solid Waste Trash Collection</b>	<b>252-2380</b>
<b>Special Assessments</b>	<b>252-2380</b>
<b>Stormwater Management</b>	<b>774-8192</b>
<b>Transportation Division</b>	<b>774-8192</b>
<b>Utilities Engineering</b>	<b>530-5335</b>
<b>Utility Billing and Customer Service</b>	<b>252-2380</b>
<b>Wastewater Department</b>	<b>594-1731</b>
<b>Water Department</b>	<b>352-7000</b>

#### **CITY AGENCIES**

<b>City of Bonita Springs</b>	<b>389-1000</b>
<b>City of Fort Myers</b>	<b>332-6700</b>
<b>City of Marco Island</b>	<b>389-5059</b>
<b>Everglades City</b>	<b>659-3781</b>
<b>Lee County</b>	<b>479-8900</b>

#### **FEDERAL AGENCIES**

<b>Army Corp of Engineers</b>	<b>334-1975</b>
-------------------------------	-----------------

#### **REGIONAL AGENCIES**

<b>Conservancy of Southwest Florida</b>	<b>262-0304</b>
<b>Rookery Bay</b>	<b>417-6310</b>
<b>South Florida Water Management District</b>	<b>597-1505</b>
<b>Southwest Florida Regional Planning Council</b>	<b>656-7720</b>

#### **STATE OF FLORIDA AGENCIES**

<b>Department of Environmental Protection</b>	<b>332-6975</b>
<b>Environmental Health Department</b>	<b>252-2499</b>
<b>Fish and Wildlife Conservation Commission</b>	<b>643-4220</b>

#### **OTHER**

<b>Collier Building Industry Association (CBIA)</b>	<b>436-6100</b>
<b>Municipal Code Corporation</b>	<b>1-800-262-2633</b>

#### **WEB LINKS**

American Planning Association

<http://www.planning.org/>

Applications and Forms - Planning

<http://www.colliergov.net/Index.aspx?page=819#LandscapeForms>

Collier Building Industry Association

<http://www.cbia.net/>

City of Naples



<http://www.naplesgov.com/>  
City of Marco Island  
[http://www.cityofmarcoisland.com/Public\\_Documents/index](http://www.cityofmarcoisland.com/Public_Documents/index)  
Clerk of Courts  
<http://www.clerk.collier.fl.us/>  
Collier County Government  
<http://www.colliergov.net/>  
Community Development Districts  
<http://www.FloridaSpecialDistricts.org/>  
Department of Business and Professional Regulation  
<http://www.state.fl.us/dbpr/>  
Department of Community Affairs  
<http://www.dca.state.fl.us/>  
Enterprise Florida  
<http://www.eflorida.com/>  
Florida DOT  
<http://www.dot.state.fl.us/>  
Florida Government Sunshine Law  
<http://myfloridalegal.com/sunshine>  
Land Development Code  
[http://www.municode.com/resources/ClientCode\\_List.asp?cn=Collier%20County&sid=9&cid=5149](http://www.municode.com/resources/ClientCode_List.asp?cn=Collier%20County&sid=9&cid=5149)  
Landscape Management for Homeowners  
<http://www.nrdc.org/water/pollution/storm/chap7.asp#FLOR>  
Naples Daily News  
<http://www.naplesnews.com/>  
Natural Resources Defense Council  
<http://www.nrdc.org/>  
Property Appraiser's Office  
<http://www.collierappraiser.com/>  
Southwest Florida Water Management District  
<http://www.sfwmd.gov/>  
Southwest Regional Planning  
<http://www.swfrpc.org/>  
Standard Industrial Classification Search  
<http://www.osha.gov/pls/imis/sicsearch.html>  
U.S. Census Bureau  
<http://www.census.gov/>  
University of Florida Institute of Food and Agricultural Sciences  
<http://collier.ifas.ufl.edu/>  
Zoning and Land Development Review  
<http://www.colliergov.net/Index.aspx?page=128>

# FORMS AND SAMPLES

## Meetings

### Notice of Members' Meeting

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

#### NOTICE OF MEMBERS' MEETING

NOTICE IS HEREBY GIVEN, in accordance with the Bylaws of the Association and Florida's Condominium Act, that the annual meeting of members will be held at the following date, time, and place:

**Date:** April 1, 2007

**Time:** 7:00 p.m.

**Place:** Clubhouse  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34102

- Agenda:
1. Calling of roll and certifying of proxies
  2. Proof of notice of meeting or waiver of notice
  3. Reading and disposal of any unapproved minutes
  4. Election of inspection of elections
  5. Election of board members
  6. Reports of officers
  7. Reports of committees
    - a. Recreation Committee
    - b. Audit Committee
    - c. Grounds Committee
  8. Unfinished business
    - a. Waiver of budget reserves
    - b. Adoption of budget
  9. New business
    - a. Consideration of amendment to declaration of condominium
    - b. Consideration of covered parking installation
    - c. General discussion by members
  10. Adjournment

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Secretary

Dated: This 1<sup>st</sup> day of March, 2007.

Notice of special members' meeting must state the purpose for which the meeting is called.

### **Board Meeting Notice to Board of Administration**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

#### **NOTICE OF MEETING**

TO: Members of the Board of Administration

1. Gilbert Franklin
2. Robert Sempos
3. Carmia Kaylor
4. Carlton Matthews
5. Ashley Filkins

NOTICE IS HEREBY GIVEN, that a meeting of the Board of administration of Del Boca Vista Condominium Association, Inc., will be held at the following date, time, and place:

Date: March 15, 2007

Time: 10:00 a.m.

Place: Clubhouse  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34012

Dated: March 8, 2007

\_\_\_\_\_  
Secretary

## **Board Meeting Notice to Members**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

### **NOTICE TO ASSOCIATION MEMBERS OF MEETING OF BOARD OF ADMINISTRATION**

NOTICE IS HEREBY GIVEN that a meeting of the Board of Administration of Del Boca Vista Condominium Association, Inc. will be held at the following date, time, and place:

Date of Meeting: March 15, 2007

Time of Meeting: 10:00 a.m.

Place of Meeting: Clubhouse  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34012

Agenda: The order of business for the regular meeting of the Board of Administration shall be as follows:

1. Reading of minutes of the previous meeting
2. Comment and discussion by unit owners
3. Report of Manager
4. Report of Officers
5. Unfinished business
  - a. Matters relating to grounds and buildings
  - b. Matters relating to conduct of unit owners
  - c. Matters relating to association financial affairs
6. New business
7. Adjournment

---

Secretary

Dated: March 1, 2007

## **Notice – Establishing Posting Location**

**RESOLUTION BY THE BOARD OF ADMINISTRATION OF DEL BOCA VISTA  
CONDOMINIUM ASSOCIATION, INC., ESTABLISHING LOCATION FOR**

**POSTING OF NOTICE FOR MEETINGS OF THE BOARD OF ADMINISTRATION AND MEETINGS OF THE MEMBERSHIP.**

THAT WHEREAS, Section 718.112 (2)(d), Florida statutes, requires the posting of notice conspicuously upon the condominium property for all meetings of the membership, and Section 718.112 (2)(c), Florida Statutes, requires posting of notice for all meetings of the Board of Administration where non-emergency special assessments or rules regarding unit use will be considered, and

WHEREAS, said provisions of the Florida Statutes requires the Association to designate the location for the posting of such notices by a rule adopted by the Board of Administration.

NOW, THEREFORE BE IT RESOLVED by the Board of Administration of Del Boca Vista Condominium Association, Inc., that the rule for the posting of notice conspicuously upon the condominium property be as follows:

1. Notice of all meetings of the membership and all meetings of the Board of Administration where non-emergency special assessments or rules regarding the use of units will be considered shall be posted on the bulletin board in the front entrance hallway of the recreation building for not less than fourteen (14) continuous days prior to any such meeting.
2. The Secretary of the Association shall be responsible for the posting of all required notices in the designated location.

Adopted by the Board of Administration this 19<sup>th</sup> day of January, 2007.

By: \_\_\_\_\_  
Secretary

**Waiver – Notice of Board Meeting**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**WAIVER OF NOTICE OF MEETING OF BOARD OF ADMINISTRATION**

We, the undersigned, being all of the members of the Board of Administration hereby agree and consent to the meeting of the Board to be held on the date and time, and at the place designated hereunder, and do hereby waive all notice whatsoever of such meeting and of any adjournment, or adjournments, thereof.

We do further agree and consent that any and all lawful business may be transacted at such meeting, or at any adjournment or adjournments thereof, as may be deemed advisable by the Board present thereat. Any business transacted at such meeting

or at any adjournments or adjournments thereof, shall be as valid and legal and of the same force and effect as if such meeting, or adjourned meeting, were held after notice.

Date of Meeting: March 15, 2007

Time of Meeting: 10:00 a.m.

Place of Meeting: Clubhouse  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34012

Dated: March 8, 2007

\_\_\_\_\_  
Member, Board of Administration

\_\_\_\_\_  
Member, Board of Administration

\_\_\_\_\_  
Member, Board of Administration

\_\_\_\_\_  
Member, Board of Administration

\_\_\_\_\_  
Member, Board of Administration

**Affidavit – Proof of Notice**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**PROOF OF NOTICE AFFIDAVIT**

STATE OF FLORIDA        )  
COUNTY OF COLLIER    )

Comes now the undersigned Secretary of Del Boca Vista Condominium Association, Inc., being first duly sworn, deposes and says that the secretary has posted or caused to be posted, conspicuously on the condominium property and has mailed or delivered or caused to be mailed or delivered written notice of the meeting of the Board of Administration to be held march 15, 2007, not less than 14 days prior to said meeting.

Dated: This 1<sup>st</sup> day of March, 2007.

By: \_\_\_\_\_  
Secretary

The foregoing Affidavit was acknowledged before me this 1<sup>st</sup> day of March, 2007, by Joseph Coytard, the Secretary of Del Boca Vista Condominium Association, Inc.

\_\_\_\_\_  
Notary Public

My commission expires:

**Proxies**

**General**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**PROXY  
April 1, 2007  
MEMBERSHIP MEETING**

TO: Secretary  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34102

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned hereby appoints the Secretary of the Association or \_\_\_\_\_, attorney and agent with the power of substitution for and in the name, place, and stead of the undersigned, to vote as proxy at the membership meeting of the Association, to be held at the Clubhouse, April 1, 2007, at 7:00 p.m., and any adjournment thereof, according to the number of votes that the undersigned would be entitled to vote if then present upon the matters set forth in the Notice of Meeting dated March 1, 2007, a copy of which has been received by the undersigned.

(In no event shall this proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given.)

Dated this \_\_\_\_\_ day of March, 2007.

Unit Owner

\_\_\_\_\_  
\_\_\_\_\_

Unit number: \_\_\_\_\_

**Limited**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**PROXY  
April 1, 2007  
MEMBERSHIP MEETING**

TO: Secretary  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34102

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned hereby appoints the Secretary of the Association or \_\_\_\_\_, attorney and agent with the power of substitution for and in the name, place, and stead of the undersigned, to vote as proxy at the membership meeting of the Association, to be held at the Clubhouse, April 1, 2007, at 7:00 p.m., and any adjournment thereof, according to the number of votes that the undersigned would be entitled to vote if then present in accordance with the specifications hereinafter made, as follows;

General Powers

\_\_\_\_\_ I hereby authorize and instruct my proxy to use his or her best judgment on all matters which properly come before the meeting as may be authorized by Section 718.112(2)(b)2, Florida Statutes.

Limited Powers

\_\_\_\_\_ I hereby specifically authorize and instruct my proxy to cast my vote in reference to the following matters only as indicated below.

1. Should the reserves required by Section 718.112(2)(f), F.S. be waived for the next fiscal year?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Should the audit of the condominium financial records by a certified public accountant be waived for the coming fiscal year?

Yes \_\_\_\_\_ No \_\_\_\_\_

The undersigned ratify and confirm any and all acts and things that the proxy may do or cause to be done in the premises, whether at the meeting referred to above or at any



change, adjournment, or continuation of it, and revoke all prior proxies previously executed.

Dated: \_\_\_\_\_

Unit Owner

\_\_\_\_\_

\_\_\_\_\_

Unit Number: \_\_\_\_\_

---

### **SUBSTITUTION OF PROXY**

The undersigned, appointed as proxy above, does hereby designate \_\_\_\_\_ to substitute for me in the proxy set forth above.

Dated: \_\_\_\_\_

Proxy \_\_\_\_\_

(In no event shall this proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given.)

### **Agenda – Board Meeting**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

### **AGENDA FOR REGULAR MEETING OF THE BOARD OF ADMINISTRATION**

The order of business for the regular meeting of the Board of Administration shall be as follows:

1. Reading of minutes of the previous meeting
2. Comment and discussion by unit owners on all matters to be considered by the Board
3. Report of Manager
4. Reports of Officers
5. Unfinished business
  - a) Matters relating to grounds and buildings

- b) Matters relating to conduct and unit owners
  - c) Matters relating to Association financial affairs
6. New business
  7. Adjournment

**Committees**

**Creating a Committee**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**A RESOLUTION OF THE BOARD OF ADMINISTRATION CREATING A COMMITTEE OF THE BOARD TO SELECT AND RECOMMEND A MANAGER FOR THE CONDOMINIUM**

BE IT HEREBY RESOLVED by the Board of Administration of Del Boca Vista Condominium Association, Inc., as follows:

**Section 1.** THAT a committee for the selection of a manger of the condominium is hereby created, and John Waters, Kim Devlin, and Lynda Gallimore are appointed to serve as members of the committee. John Waters shall serve as the chairman of the committee.

**Section 2.** THAT the committee shall have the authority to expend up to \$500.00 in costs for the advertisements and other related expenses in recruiting potential candidates for the position of manager.

**Section 3.** THAT the committee shall have the authority to investigate and interview candidates on behalf of the Board of Administration, and shall select from the candidates the three individuals which the committee feels are best qualified to fill the position of manager, and shall recommend them, in order of preference, the full Board of Administration, prior to the next regular quarterly meeting.

**Section 4.** THAT the committee shall not be authorized to hire any individual for the position of manager or otherwise expend, or commit to expend, any funds of the Association except as specifically authorized by this resolution.

ADOPTED by the Board of Administration this 29<sup>th</sup> day of March, 2007.

(CORPORATE SEAL)

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

## **Declaration of President**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

### **DECLARATION OF THE PRESIDENT**

COMES NOW, Gilbert Franklin, President of Del Boca Vista Condominium Association, Inc., and does hereby exercise the authority granted in the bylaws of the Association and does state and declare as follows:

1. THAT, there is created a bylaw committee to study and evaluate the recent amendments to the Condominium Act, and to make a review of the bylaws of the Condominium Association.
2. THAT, the membership for the committee shall consist of Ashley Filkins, Carlton Matthews and Frank Mott. Ashley Filkins is hereby designated to serve as chairman of the committee.
3. THAT, the committee shall make recommendations for proposed amendments to the bylaws which govern the condominium community, and shall advise the president on any amendments to the law which may require changes to the policies and procedures of the Condominium Association.
4. THAT, the committee shall not have the authority to act for, or to bind the Association, nor shall it have the authority to expend any funds of the Association. The existence of the committee shall terminate upon submitting its final report to the President.

DONE this 28<sup>th</sup> day of March, 2007.

By: \_\_\_\_\_  
President

## Committee Reports

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

### REPORT OF THE SPECIAL BYLAW COMMITTEE

TO: President And members Of The Board Of Administration,  
Del Boca Vista Condominium Association, Inc.

FROM: Special Bylaw Committee,  
By Appointment Of The President, March 28, 2007

The special bylaw committee met on three (3) occasions, after posting notice forty-eight (48) hours in advance of each meeting, to evaluate the amendments to the Condominium Act and to consider amendments to the Association's bylaws. As a result of the committee's study, the following changes are recommended:

1. The Association establish a standing committee for budget and finance.
2. The Association revise its fining policy to limit the amount to no more than \$100.00.
3. The Association establish a uniform procedure for reviewing new owners and providing them copies of the condominium documents.

The committee additionally recommends the following changes and additions be made to the bylaws of the Association.

1. Addition of a section to provide for voluntary binding arbitration of disputes between owners and the Association.
2. Deletion of the section allowing members of the Board of Administration to abstain from voting.
3. Amendment to the section of the bylaws relating to the term of office for board members to permit members to serve for staggered terms of two (2) years.

Respectfully submitted this 10<sup>th</sup> day of April, 2007.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

## **Elections**

### **First Notice**

#### **FIRST NOTICE OF ELECTION**

NOTICE IS HEREBY GIVEN that the election to fill vacancies on the Board of Administration of Del Boca Vista Condominium Association, Inc. will be held at 7:00 p.m. on April 1, 2007 at the Clubhouse located at 100 Seaview Drive, Naples, Florida, 34102. Any unit owner (or other eligible person) desiring to be a candidate for the Board of Administration shall give written notice to the Secretary of the Association of such person's candidacy on or before February 20, 2007 (not less than 40 days before the election).

Written responses from individuals desiring to be a candidate for the Board of Administration should be directed to the Secretary of the Association at the following address:

Secretary  
Del Boca Vista Condominium Association, Inc.  
100 Seaview Drive  
Naples, Florida 34102

DATED AND MAILED: January 31, 2007 (not less than 60 days prior to the election)

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Secretary

### **Second Notice of Election**

#### **SECOND NOTICE OF ELECTION**

NOTICE IS HEREBY GIVEN that the election to fill vacancies on the Board of Administration of Del Boca Vista Condominium Association, Inc. will be held at 7:00 p.m. on April 1, 2007 at the Clubhouse located at 100 Seaview Drive, Naples, Florida, 34102. A ballot listing all candidates for the Board of Administration accompanies this notice. An information sheet on each candidate who has furnished information and requested its distribution on his or her candidacy is also enclosed with this notice.

The ballot is to be completed by the voting member in accordance with the enclosed instructions and returned to the Secretary of the Association at the following address:

Secretary  
Del Boca Vista Condominium Association, Inc.  
100 Seaview Drive  
Naples, Florida 34102

DATED AND MAILED: February 27, 2007 (not less than 60 days prior to the election)

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Secretary

**Candidate Information Sheet**

**CANDIDATE INFORMATION SHEET**

NAME: \_\_\_\_\_

UNIT #: \_\_\_\_\_

PERMANENT ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_

EDUCATION:  
\_\_\_\_\_  
\_\_\_\_\_

PERSONAL BACKGROUND:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PRIOR CONDOMINIUM EXPERIENCE:

---

---

---

COMMENTS ABOUT BOARD CANDIDACY:

---

---

---

**Voting Certificate**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**VOTING CERTIFICATE**

TO: Secretary  
Del Boca Vista Condominium Association, Inc.  
100 Seaview Drive  
Naples, Florida 34102

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned is the record owner of that certain condominium unit in DEL BOCA VISTA CONDOMINIUM, a Condominium, shown below, and hereby constitutes, appoints and designates \_\_\_\_\_ as the voting representative for the condominium unit owned by said undersigned pursuant to the Bylaws of the Association.

The aforementioned voting representative is hereby authorized and empowered to act in the capacity herein set forth until such time as the undersigned otherwise modifies or revokes the authority set forth in this voting certificate.

DATED this 1<sup>st</sup> day of March, 2007.

Unit Owner

---

---

Unit Number: \_\_\_\_\_





\_\_\_\_\_  
Owner                      Date

**Unit 102**

\_\_\_\_\_  
Owner                      Date

\_\_\_\_\_  
Owner                      Date

**Unit 103**

\_\_\_\_\_  
Owner                      Date

\_\_\_\_\_  
Owner                      Date

\_\_\_\_\_  
Owner                      Date

**Unit 202**

\_\_\_\_\_  
Owner                      Date

\_\_\_\_\_  
Owner                      Date

**Unit 203**

\_\_\_\_\_  
Owner                      Date

\_\_\_\_\_  
Owner                      Date

**Transition**

**Notice of Transition Members' Meeting**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

**NOTICE OF TRANSITION MEMBERS' MEETING FOR  
DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.**

NOTICE IS HEREBY GIVEN, in accordance with Section 718.301, F.S., and the Bylaws of the Association, that the transition members' meeting of Del Boca Vista Condominium Association, Inc. will be held at the following date, time, and place:

Date of Meeting: March 15, 2007

Time of Meeting: 10:00 a.m.

Place of Meeting: Clubhouse  
Del Boca Vista Condominium  
100 Seaview Drive  
Naples, Florida 34102

The purpose of the meeting will be to elect members of the Board of Administration and to accept control of the Association.

The Agenda for the meeting will be as follows:

6. Calling of roll and certifying of proxies.
7. Proof of notice of meeting.
8. Election of inspectors of election.
9. Election of board members.
10. New Business.
6. Adjournment.

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Secretary

Dated: March 1, 2007

**Transition - Notice of Unit Owner Elections**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.

100 Seaview Drive

Naples, FL 34102

March 22, 2007

Division of Florida Land Sales, Condominiums and Mobile Homes  
725 South Bronough Street  
Tallahassee, FL 32301

Re: Del Boca Vista Condominium Association, Inc.  
(Notice of Unit Owner Elections)

The undersigned developer does hereby provide notice to the Division that the following individuals were elected as unit owner board members on March 15, 2007.

Gilbert Franklin  
100 Seaview Drive  
Unit 101  
Naples, FL 34102

Ashley Filkins  
100 Seaview Drive  
Unit 102  
Naples, FL 34102

Carmia Kaylor  
100 Seaview Drive  
Unit 103  
Naples, FL 34102

Robert Sempos  
100 Seaview Drive  
Unit 104  
Naples, FL 34102

Carlton Matthews  
100 Seaview Drive  
Unit 105  
Naples, FL 34102

Transfer of control of the Association Board of Administration has occurred as a result of the election of these unit owner board members.

Respectfully,  
DEL BOCA VISTA  
CONDOMINIUM ASSOCIATION,  
INC.

By: \_\_\_\_\_  
President

## **Transition – Receipt of Documents (condominium)**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.

100 Seaview Drive

Naples, FL 34102

March 15, 2007

Board of Directors

Del Boca Vista Condominium Association, Inc.

100 Seaview Drive

Naples, FL 34102

Re: Control of Association Records and Property

Dear Board of Directors:

In accordance with the requirements of Florida's Condominium Act, accompanying this correspondence please find the following items to be delivered from the developer-controlled Board of Administration to the unit owner-controlled Board of Administration at the time of transition:

1. The original or a photocopy of the recorded Declaration of Condominium and all its amendments. If a copy is provided, it must be certified by an affidavit from the developer or an officer or agent of the developer stating that it is a complete copy of the actual recorded declaration.
2. A certified copy of the Association's Articles of Incorporation.
3. Copy of Bylaws.
4. The minute books, including all minutes, and other books and records of the association, if any.
5. Any house rules and regulations which have been adopted.
6. Resignation 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.
7. 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 from the incorporation of the Association or if the records have been audited each fiscal year since incorporation, the audit must be from the date of the last audit.
8. Actual Association funds or control over the funds.

9. All personal property that is the property of the Association, which is part of the common elements or which is alleged to be a part of the common elements, and an inventory of that property.
10. A copy of the plans and specifications used in conjunction and/or remodeling pursuant to Section 718.301(4)(f), F.S.
11. A list of all the names and addresses of all contractors, subcontractors, and suppliers used in construction or remodeling, and in the landscaping of the condominium or Association property.
12. Insurance policies.
13. Copy of all certificates of occupancy issued for the condominium property.
14. Any other permits issued by governmental bodies that are in force or were issued within 1 year prior to turnover.
15. All written warranties in effect.
16. A roster of the unit owners, their addresses and telephone numbers, if known.
17. Leases.
18. Employment contracts or service contracts.
19. All other contracts to which the Association is a party.

Please acknowledge receipt by having a member of the Board of Administration sign below. The signing of this receipt shall not constitute a waiver of individual unit owner or Association rights with respect to completeness and accuracy of the documents being transferred or preclude administrative remedies available to the Division of Land Sales, Condominiums and Mobile Homes.

DEL BOCA VISTA DEVELOPMENT CORPORATION

By: \_\_\_\_\_

Receipt of the foregoing materials is hereby acknowledged this 15<sup>th</sup> day of March, 2007.

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.

By: \_\_\_\_\_

## Assessments

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

### SPECIAL ASSESSMENT NOTICE

NOTICE IS HEREBY GIVEN that the Board of Administration has adopted a special assessment to be used for the painting and exterior repair of the building and the replacement of damaged shrubbery. The assessment has been allocated among the unit owners based upon each unit's allocated share of the common elements as follows:

Unit	Assessment Amount
101	\$1,000.00
102	\$1,000.00
103	\$1,000.00
104	\$1,000.00
105	\$1,000.00
106	\$1,000.00

DUE DATE for the special assessment is March 20, 2007, and the Board has authorized alternative methods for payment as follows:

1. The owner may pay the full assessment on or before March 20, 2007, or;
2. The owner may pay \$200.00 on or before March 20, 2007, and \$100.00 on or before the first of each month thereafter, together with interest at the rate of 18% per annum, until the special assessment is paid in full.

DONE AND ORDERED by the Board of Administration on January 28, 2007.

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Secretary

## **Amending Documents**

### **Notice of Amendment to Condominium Documents**

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit

#### **NOTICE OF AMENDMENT TO CONDOMINIUM DOCUMENTS**

TO: MEMBERS, DEL BOCA VISTA  
CONDOMINIUM ASSOCIATION, INC.

FROM: SECRETARY,  
BOARD OF ADMINISTRATION

NOTICE IS HEREBY GIVEN that amendments to the Declaration of Condominium were adopted at the annual meeting of members of March 15, 2007, recorded with the Clerk of the Circuit Court of Collier County, Florida, in O.R. Book 900, Page 1001, on April 15, 2007. The amendments became effective upon recording and a copy of the recorded amendments accompany this notice of their adoption.

Dated this 22<sup>nd</sup> day of April, 2007.

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.

By:

---

Secretary

Enclosures.

**Certificate of Amendment**

**CERTIFICATE OF AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM  
OF  
DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.**

NOTICE IS HEREBY GIVEN that at a duly called meeting of the members on April 10, 2007, by a vote of not less than two-thirds of the voting interests of the Association and after unanimous adoption of a Resolution proposing said amendments by the Board of Administration, the Declaration of Condominium for DEL BOCA VISTA CONDOMINIUM, as originally recorded in O.R. Book 800, Page 100, et seq., in the Public Records of Collier County, be and the same is hereby amended as follows:

1. The Declaration of Condominium for DEL BOCA VISTA CONDOMINIUM is hereby amended in accordance with Exhibit A attached hereto and entitled "Schedule of Amendments to Declaration of Condominium."
2. The Bylaws of DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., being Exhibit B to said Declaration of Condominium, are hereby amended in accordance with Exhibit B attached hereto and entitled "Schedule of Amendments to Bylaws."

IN WITNESS WHEREOF, DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed this 10<sup>th</sup> day of April, 2007.

(CORPORATE SEAL)

DEL BOCA VISTA CONDOMINIUM  
ASSOCIATION, INC.,

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

STATE OF FLORIDA            )  
COUNTY OF COLLIER        )

On this 10<sup>th</sup> day of April, 2007, personally appeared Gilbert Franklin, President, and acknowledged before me that he executed this instrument for the purposes herein expressed.

\_\_\_\_\_  
Notary Public

My commission expires:



**Articles of Amendment**

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.  
A Corporation Not-for-Profit**

The undersigned do hereby make, subscribe, acknowledge and file with the Secretary of State these Articles of Amendment in accordance with the vote of not less than two-thirds of the entire voting interests of the association at a duly called meeting of the members on March 7, 2007, after unanimous adoption of a Resolution proposing said amendments by the Board of Administration.

The Article of Incorporation of DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., are, and shall hereby be, amended in accordance with the Schedule of Amendments to the Articles of Incorporation attached hereto as Exhibit A and by reference made a part hereof.

IN WITNESS WHEREOF, DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., has caused these Articles of Amendment to be executed in accordance with the authority hereinabove expressed this 8<sup>th</sup> day of March, 2007.

(CORPORATE SEAL)

DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC.

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

STATE OF FLORIDA     )  
COUNTY OF COLLIER    )

On this 22<sup>nd</sup> day of March, 2007, personally appeared Gilbert Franklin, President, and acknowledged before me that he executed this instrument for the purposes herein expressed.

\_\_\_\_\_  
Notary Public

My commission expires:

## **Resolutions of Board of Administration**

### **Hurricane Shutters**

#### **A RESOLUTION BY THE BOARD OF ADMINISTRATION OF DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., ESTABLISHING RULES FOR THE INSTALLATION OF HURRICANE SHUTTERS**

THAT WHEREAS, Section 718.113(5), Florida Statutes, authorizes any unit owner to install hurricane shutters in accordance with specifications approved by the Board of Administration, and

WHEREAS, the Condominium Act allows for such specifications to be adopted by the Board concerning the color, style and other relevant factors of such installation.

NOW, THEREFOR BE IT RESOLVED by the Board of Administration of Del Boca Vista Condominium Association, Inc., that the specifications governing the right of unit owners to install hurricane shutters shall be as follows:

1. Any installation of hurricane shutters by a unit owner shall comply with the building code of Naples, Florida. Any contract for such installation shall be in writing. Any contract for such installation shall be in writing and shall be with a properly licensed contractor.
2. An owner installing hurricane shutters shall be responsible for any damage to the common elements or another unit as a result of such installation.
3. No hurricane shutter shall be installed that is not white in color and is not fully retractable when not in use.
4. Prior to commencement of installation of any hurricane shutter(s), the unit owner shall give written notice to the Board of Administration of the owner's intention to make such installation. The owner shall additionally provide the Board with a copy of the agreement for the installation, the color and specifications of the shutter(s), and an estimated work schedule for the installation.

ADOPTED by the Board of Administration this 30<sup>th</sup> day of April, 2007.

### **Speaking at Meetings**

#### **A RESOLUTION BY THE BOARD OF ADMINISTRATION OF DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., ESTABLISHING RULES GOVERNING THE RIGHT OF UNIT OWNERS TO SPEAK AT BOARD MEETINGS AND COMMITTEE MEETINGS**

THAT WHEREAS, Section 718.112(2)(c), Florida Statutes, authorizes any unit owner to speak at meetings of the Board of Administration and committees of the Association, and

WHEREAS, the Association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements at such meetings.

NOW THEREFORE BE IT RESOLVED by the Board of Administration of Del Boca Vista Condominium Association, Inc., that the rules governing the rights of unit owners to speak at meetings of the Board and committees of the Association be as follows:

1. Any unit owner desiring to speak at meetings of the Board or meetings of a committee of the Association shall be entitled to do so with respect to all designated agenda items. An owner does not have the right to speak with respect to items not specifically designated, but may do so at the discretion of the chair.
2. Any unit owner desiring to speak before a meeting must file a written request with the chairman of the meeting prior to the commencement of the meeting. The request shall state the subject which the unit owner wishes to address.
3. No unit owner may exceed more than three (3) minutes with respect to any subject upon which the unit owner is recognized to speak. At the conclusion of his or her remarks, an owner shall refrain from further comments or remarks as a courtesy to the next speaker.

ADOPTED by the Board of Administration the 15<sup>th</sup> day of April, 2007.

By: \_\_\_\_\_  
Secretary of the Association

### **Recording and Videotaping Meetings**

#### **A RESOLUTION BY THE BOARD OF ADMINISTRATION OF DEL BOCA VISTA CONDOMINIUM ASSOCIATION, INC., ESTABLISHING RULES GOVERNING RECORDING AND VIDEOTAPING MEETINGS**

THAT WHEREAS, Sections 718.112(2)(c) and (d), Florida Statutes, authorizes any unit owner to tape record or videotape meetings of the Board of Administration and the membership, and

WHEREAS, the Condominium Act and Rule 61B-23.002(10), Florida Administrative Code, by the Division of Florida Land sales, Condominiums and Mobile Homes allows for reasonable restrictions to be imposed on a unit owner desiring to tape record or videotape a meeting.

NOW THEREFORE BE IT RESOLVED by the Board of Administration of Del Boca Vista Condominium Association, Inc., that the rules governing the taping and videotaping of meetings of the Board and the membership be as follows:

1. Any unit owner desiring to utilize audio or video equipment at meetings of the Board or membership shall notify the Board of Administration of such owner's intention at least twenty-four (24) hours prior to the meeting.
2. All equipment shall be assembled and placed in position prior to the commencement of the meeting in the location designated, and no one videotaping or recording a meeting shall be permitted to move about the meeting room in order to facilitate the recording,
3. No equipment shall be permitted that produces distracting sounds or light emissions.

ADOPTED by the Board of Administration this 15<sup>th</sup> day of April, 2007.

By: \_\_\_\_\_  
Secretary of the Association

# INDEX

Access to Units.....	33
Accounting Information System .....	104
Accounting Records .....	102, 103, 107
Advisory Council .....	44
Agendas .....	7
Alternate Election Procedures.....	83
Amending Documents .....	38
Amending Governing Documents.....	3
Annual Meeting.....	67, 72
Annual Meetings .....	8
Annual Traffic PUD Monitoring Report .....	130
Arbitration.....	23, 24, 88, 93, 95
Architectural Review Committee.....	9
Articles of Incorporation .....	3, 35, 36, 61
Assessments .....	105
Assessments .....	14
Assistance In Voting .....	82
Association Contracts.....	17
Association Fees.....	111
Ballots and Envelopes .....	80
Board Action Concerning Recall .....	92, 93
Board Meetings .....	7
Board of County Commissioners.....	124, 125, 130, 151, 152, 154, 155, 161
Board of Directors.....	2, 6, 8, 12, 28, 29, 40, 59, 63, 68
Board of Directors.....	5
Board of Directors Meetings.....	8
Bond Anticipation Notes .....	118, 121
Broadcast Notice .....	7, 67, 71
Budget.....	13, 29, 67, 96, 97, 98, 99, 101
Budgets .....	96
Building Permits.....	155
Building Review and Permitting .....	127, 155, 157
Bylaws .....	3, 29, 35, 37, 38, 39
Campaigning .....	80
Casting The Vote.....	73
CDD Governance .....	119
Coastal Advisory Committee.....	125
Code Enforcement.....	128, 147, 160, 161
Collier County Ordinances .....	157
Collier County Planning Commission.....	124

Commingling of Funds.....	106
Committee Meetings .....	9, 67, 72
Committees .....	9, 11, 29
Common Elements .....	40
Community Association Management .....	52
Community Development Districts.....	112
Compensation .....	28, 31, 54
Comprehensive Planning .....	114, 128
Conducting Your Election .....	81
Conservation Collier Land Acquisition Advisory Committee .....	125
Contact Information .....	161
Contact Numbers.....	141
Contacting Licenses .....	157
Declaration of Condominium .....	36, 39, 61
Declaration of Covenants .....	3
Developer.....	45
Developer Control.....	46, 47
Developer-Appointed Board.....	28
Development of Regional Impact (DRI) .....	154
Development Services Advisory Committee.....	126
Directors and Officers .....	28
Disaster Plan .....	59
Disaster Planning .....	54
Disposal Facilities .....	150
Dispute Resolution .....	22
Disputes .....	18, 22
District Engineer .....	121
District Manager.....	119, 120
Documents and Association Rules.....	35
Election Checklist .....	87
Election Monitor Requests .....	84
Election Rights of Owners.....	82
Elections .....	17, 78
Electronic noticing .....	69, 70
Electronics Recycling .....	149
Eligibility .....	28, 80
Emergency Planning.....	135
Enforcement Powers.....	14
Engineering Services .....	128, 129, 135
Environmental.....	146
Environmental Advisory Council .....	126
Environmental Services.....	128, 129, 130, 147, 156, 157
Establishment of a Community Development District.....	114
file for mediation or arbitration.....	24
Filling Vacancies.....	5
Financial .....	13, 107

Financial Report.....	14
Financial Responsibilities of Unit Owners .....	34
Fines and Penalties .....	33
Fines and Suspensions .....	21
Fining Procedure .....	21
First Notice of Election .....	79
Fiscal Year .....	98
Flag Display .....	43
Flood.....	31, 62, 64, 65, 137, 139, 140, 141
Floodplain Management Planning .....	126
Forms .....	163
General Obligation Bonds .....	118
General vs. Limited Proxy .....	83
Good Accounting Practices .....	102
Governing Documents.....	3, 4
Hazard Analysis .....	57
Hazardous Waste.....	149
Hierarchy of Governing Documents .....	35
Hiring Licensed Contractors.....	111
Hurricane Shutters.....	31
Identifying Common Elements .....	41
Identifying Limited Common Elements.....	42
Insurance.....	30, 31, 50, 58, 59, 61, 62, 64, 65, 66, 99, 137, 138, 142
Invasive Exotic Plant Species .....	129
Investing Association Funds .....	103
Irrigation Ordinance .....	159, 160
Irrigation Schedule .....	159
Landscape Maintenance Practices.....	135
Landscape Tree Removal for Cultivated Landscapes .....	155
Lighting Compliance.....	147
Limitations of CDD Powers .....	114
Limited Proxy Form Instructions .....	84
Maintenance of the Common Elements .....	30
Manatee Protection.....	129, 130
Mediation .....	22, 23, 24
Meetings .....	7, 67
Membership Meetings .....	7, 8
Minutes .....	9, 11, 16, 67, 77, 133
Municipal Service Taxing Unit.....	154
Neighborhood Informational Meeting (NIM).....	152
Non-ad Valorem Tax Collection Procedures.....	118
Non-Certification of the Recall.....	95
Non-Developer Representation.....	46
Notice of Meetings .....	11
Notice Requirements .....	7, 69
Notices of Intent.....	79

Officers .....	29, 31, 43, 120
Officers of the Association .....	6
Official Records .....	15
Ombudsman .....	44
Owner-Controlled Board .....	28
Participation .....	8
Participation at Meetings .....	11
Participation At Meetings .....	76
Permits and Petitions .....	154
Petition For Election Monitor .....	85
Planned Unit Development (PUD).....	151, 152
Post-Disaster Recovery .....	62, 126
Preparing For the Disaster .....	60
President .....	6, 29
Procedure for Amending Documents .....	40
Prohibited Clauses .....	5
Proxies .....	9, 18, 67, 75, 76, 78, 83
PUD Monitoring.....	130, 152
Quorum.....	9, 20, 37, 67, 71
Recall.....	18, 88
Recall By Vote At Unit Owner Meeting .....	89
Recall By Written Agreement.....	92
Recall Meeting .....	90
Recall of a majority or more .....	91
Recall of less than a majority.....	91
Red Tide .....	148
Refunding Bonds.....	117
Regular Assessments .....	106
Regular Meetings .....	73
Rental Registration Ordinance .....	160
Reserves .....	99
Resignation of Directors .....	18, 21
Restrictions .....	33, 34, 38, 80, 133
Restrictions and Responsibilities of Unit Owners .....	33
Revenue Bonds .....	117
Reviving Governing Documents.....	4
Right to Record Meetings.....	77
Rules and Regulations .....	3, 35, 38, 61
Rules Enforcement .....	32
Sea Turtle Protection.....	129, 147
Sea Turtles .....	147
Second Notice of Election .....	79
Secretary .....	6, 29, 120
Sheriff's Office .....	142
SLAPP Suits .....	25
Special Assessment Bonds .....	116



Special Assessment Tax Procedures .....	118
Special Assessments.....	11, 106, 117, 161
Special Meetings .....	8, 73
Storm Surge .....	136
Street Name Change Request.....	157
Sunshine Law Exceptions.....	72
Sunshine Laws .....	11, 68, 72
Sunshine Laws .....	10, 131
Swimming Pools .....	158
Taxes.....	99, 108, 115, 116
Tie Breaker .....	82
Traffic Calming.....	131
Transition .....	11
Transportation .....	130
Treasurer .....	7, 30, 120
Tree Selection and Planting .....	148
Turnover .....	46
Turnover Audit Requirements .....	46, 51
Unit Owner Meetings .....	68, 72
Unlicensed Contractor Activity .....	111
Use Rights.....	15, 43
Vegetation Removal Permit.....	156
Vice-President.....	6
Voting Machines .....	82
Waste Management .....	149, 150
Water Management .....	134
Waterways Management .....	130
Web Links.....	162
Zoning and Land Development Review.....	127, 149, 158