

ELECTION BROCHURE FOR CONDOMINIUM ASSOCIATIONS

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ELECTING YOUR BOARD OF ADMINISTRATION

The board of directors for your condominium association must be elected by the process prescribed in Chapter 718, Florida Statutes, and Rule 61B-23.0021, Florida Administrative Code, unless your association has 10 or fewer units and has adopted an alternate election procedure in its bylaws (see *Alternate Election Procedures*, below). This brochure summarizes the process prescribed by the statutes and rules.

The board of administration shall be composed of five members, unless the condominium has five or fewer units.

The board shall consist of not fewer than three members in condominiums with five or fewer units that are not-for-profit corporations.

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 the same day and place as your association's annual meeting. Unless otherwise provided in the associations bylaws, the annual meeting and election shall be held within 45 miles of the condominium property. 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 among the association's official records for at least one year from the date of the election to which these items relate.

It is important to note that **nominating committees are prohibited** by statute. Search committees may be used to encourage individuals to run for the board, however, they have no authority to nominate candidates for the board. Candidates nominate themselves by giving notice to the association of their intent to run for the board (see *Notices of Intent*, below).

BOARD MEMBER TERM OF OFFICE IN CONDOMINIUMS

The terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise prohibited by the bylaws.

Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation.

A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

If the number of board members whose terms expire at the annual meeting equals or

exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting.

Unless otherwise provided in the bylaws, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the new board, even if there is less than a quorum or even 1 director. (This would be an appointment.)

CANDIDATE ELIGIBILITY

A person must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run (At least 40 days before the scheduled election), in order to have his or her name listed as a proper candidate on the ballot or to serve on the board.

In an association of more than 10 units, co-owners of a unit may not serve on the board at the same time unless they own more than one unit or there are not enough eligible candidates to fill the vacancies on the board at the time of the election.

A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot.

A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for a period of no less than 5 year.

ADVANCE NOTICE

The First Notice of Election

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

The Second Notice of Election

The second notice of election must be mailed 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/annual meeting and must be posted conspicuously on the condominium property at least 14 continuous days before the annual

meeting. If an election is too occurred included with the second notices are the printed ballots, the envelopes for returning the completed ballots and any candidate information sheets that have been submitted to the board. (See Information Sheet and *Ballots and Envelopes* below).

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

INFORMATION SHEET

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. 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.

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.

Forgery of a ballot envelope used in a condominium association election or voting certificate is punishable as forgery pursuant to s. 831.01, F.S., (Forgery & counterfeiting).

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 the same day and place as the annual meeting. Your documents should indicate when your annual meeting is to take place. In condominiums, unless otherwise provided in the associations bylaws, the annual meeting and election shall be held within 45 miles of the condominium property. 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 or 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.

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

All envelopes and ballots, whether disregarded or not, must be retained by the association for one year.

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.

ELECTRONIC VOTING

Associations may elect to conduct elections and other membership votes through an internet-based online voting system according to the following terms:

Each member voting electronically must consent, in writing, to electronic voting.

The Association must provide each member with a method to:

- Authenticate the member's identity to the online voting system.
- Transmit an electronic ballot for board elections to the electronic voting system that ensures the secrecy and integrity of each ballot.
- Verify the authenticity of receipts sent from the electronic voting system.
- Confirm, at least 14 days before the voting deadline that the member's electronic device can successfully communicate with the online voting system.

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

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

ALTERNATE ELECTION PROCEDURES

An association may use voting and election procedures different from those described in the brochure. This only applies to associations of 10 or fewer units. In order to adopt alternative election procedures, a majority of the total voting interests just 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.

BOARD MEMBER CERTIFICATION

Within 90 days after being elected or appointed to the board, the board member must certify in writing to the secretary that he or she has read and understands the governing documents and will faithfully discharge his or her fiduciary responsibility. In lieu of this certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed a educational curriculum administered by a division-approved condominium educational provider within 1 year before or 90 days after the date of the election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. Failure to do either of these two things mentioned above means that the director is suspended from service on the board until he or she complies.

The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

This brochure has been developed as an educational tool to aid associations in understanding the election processes outlined in the Condominium Act.

It is imperative that associations refer to the language found in the Condominium Act, and the Florida Administrative Code, as well as any requirements in the association's documents prior to beginning the election process.

The statutory and rule language pertaining to condominiums may be found as follows:

CONDOMINIUMS

Section 718.112(2)(d), Florida Statutes

Section 718.128, Florida Statutes

Rule 61B-23.0021, Florida Administrative Code