

HOLLANDER, GOODE & LOPEZ, PLLC

Condominium Board Member Certification Course

HELPING YOU RUN YOUR CONDO BOARD.....AND MORE!

DISCLAIMER: This webinar is for educational purposes only and is not legal advice.

Why Become Certified Board Member? –F.S. 718.112(2)(d)

- Within **90 days of being elected** or appointed to the Board of Directors, each new Board member must do **both** of the following:
 - 1. Certify in writing to the Secretary of the Association that he/she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members; **AND**
 - 2. Submit to the Secretary of the Association a certificate of having satisfactorily completed the educational curriculum administered by the division or a division approved condominium education provider.

Topics Covered in Today's Course

- 1. Notice and Meeting Requirements
- 2. Election Procedures and Annual Meeting
- 3. Levying of Fines/Enforcement of Declaration
- 4. Recordkeeping of Official Records and Inspection Requests
- 5. Financial Literacy and Transparency (Financial Reporting and Budgeting)
- 6. Structural Integrity Reserve Studies
- 7. Milestone Inspections

Notice and Meeting Requirements

Meetings and Notices- Generally

- Must contain time, place, location of the meeting
- Must contain an agenda setting forth the items to be discussed
- Specific meetings types may have additional requirements
- If more than 10 units, Board must have a meeting at least once each quarter which must include an opportunity for members to ask questions of the Board

Video Conference

- Board meetings may be conducted in person or by video conference
 - If conducted via video conference, notice must include a hyperlink and a call in conference number for unit owners to attend meeting as well as address of physical location where the unit owners can attend in person
- Membership meetings may also be conducted in person or by video conference
 - If conducted via video conference, owners may vote electronically as provided in s. 718.128
 - If the annual meeting is conducted via video conference, a quorum of the members of the Board must be physically present at the physical location where the unit owners can attend
- Video conference meetings must be recorded and maintained as official record
- A sound transmitting device must be used so that conversation of members may be heard by the board or committee members attending in person, as well as any unit owners present

What is a Board Meeting?

- Any meeting at which a quorum of the Board is present to discuss association business
- What is a quorum?
 - Check your governing documents but it is generally a majority of the Board
- Members of the Board may use e-mail as a means of communication but may not vote on an association matter via email
- Board members may not vote by proxy in a Board of Director Meeting

Board of Directors/Committee Meetings

- Notice must be posted conspicuously on condominium property
- Notice must specifically identify all agenda topics
- Notice must be posted for at least 48 continuous hours prior (except in an emergency) to meeting
- Applies to committee meetings that take final action on behalf of the board or make recommendations regarding the Association budget (regardless of provisions to the contrary in the governing documents)
- Also applies to committee meetings, in general unless there is a specific exemption in the By-Laws of the Association
- Notice must be posted on website for those condominiums subject to website requirements
- If agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice and made available for inspection and copying upon a written request from a unit owner or made available on the Association website/document portal

Board of Directors to Consider Special Assessment

- Notice must be posted conspicuously on condominium property at least 14 days in advance of meeting
- Notice must be mailed, hand delivered or electronically delivered to all owners at least 14 days in advance of the meeting
- Notice must be posted on the Association website at least 14 days in advance of the meeting
- Notice must specifically state that assessments will be considered
- Notice must provide the estimated cost and purposes for the special assessment
- Association must retain affidavit of mailing/posting in official records as proof of notice

Budget Meeting (Discussed in greater detail later in class)

- Notice must be posted conspicuously on condominium property at least 14 days in advance of meeting
- Notice must be mailed, hand delivered or electronically delivered to all owners at least 14 days in advance of the meeting
- Notice must be posted on the Association website at least 14 days in advance of the meeting
- Notice must provide copy of the proposed fully funded budget (discussed in greater detail later)
- Notice must be evidenced by affidavit providing proof of posting/ mailing

Board of Directors Meeting to Consider Rules

- If rules are regarding “unit use”
 - Notice must be posted conspicuously on condominium property at least 14 days in advance of meeting
 - Notice must be mailed, hand delivered or electronically delivered to all owners at least 14 days in advance of the meeting
 - Notice must be posted on the Association website at least 14 days in advance of the meeting
 - Must be evidenced by affidavit providing proof of notice
- If rules are regarding common elements
 - Notice must be posted conspicuously on condominium property at least 48 hours in advance of meeting

Unit Owner Meetings/Annual Meeting

- Double check your governing documents – many documents require longer notice
- Notice must be posted conspicuously on condominium property at least 14 days in advance of meeting
- Notice must be mailed, hand delivered or electronically delivered to all owners at least 14 days in advance of the meeting
- Notice must be posted on the Association website (if subject to requirements) at least 14 days in advance of the meeting
- Must be evidenced by affidavit providing proof of notice
- Must be held within 15 miles of the condominium property or within the same county

Proxies - 718.112(2)(a)

- A unit owner may vote or establish quorum by proxy if they cannot attend the members' meeting.
- **Proxy** is authorization given to another person to exercise vote of the unit owner.
- Check the Association Declaration and Bylaws about how to properly authorize proxy.
- **Proxies may NOT be used** to vote for Board of Directors in elections.

Proxies - Continued

- Proxy may be used to **establish a quorum**.
- The unit owner may **revoke the proxy at any time** at the unit owner's request.
- Effective for the meeting in which the proxy is authorized or any adjournments thereof but **not valid for longer than 90 days** after the date of the meeting for which is was given.

General vs. Limited Proxy

- A **limited proxy** designates how the holder is obligated to vote on a **specific subject**.
 - The holder must vote in accordance with the proxy form.
- A General proxy allows the holder to vote according to the holder's wishes.

Limited Proxy Required

- A **limited proxy** is required for:
 - 1. For vote to reduce reserves (non-SIRS only).
 - 2. For vote to waive financial reporting requirements.
 - 3. For votes to amend the Declaration, Articles of Incorporation, or Bylaws.
 - 4. Any other matter for which the Condo Act requires or permits a vote of the unit owners.

Unit Owners Right to Speak

- Unit Owner has the right to speak at all meetings regarding:
 - All agenda topics
 - Right to ask questions relating to:
 - Reports on the status of construction or repair projects;
 - Status of revenues and expenditures during the current fiscal year
 - Other issues affecting the condominium
- Association may adopt written reasonable rules governing frequency, duration and manner of unit owner statements

Unit Owners Right to Record

- Unit Owner has the right to record or videotape meetings subject to reasonable Rules

- Equipment must not produce distracting sound or light emissions.
- If adopted in advance by the board or unit owners as a written rule, audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.
- If adopted in advance by the board or unit owners as a written rule, anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.
- If adopted in advance by the board or unit owners as a written rule, advance notice shall be given to the board by any unit owner desiring to utilize any audio or video equipment.

Board of Director Elections and Annual Meeting

Board of Directors Elections

- The Condominium Act and Florida Administrative code sets forth a specific procedure for the election of Board of Directors
- If the Association has *10 or fewer units*, it may adopt alternative procedures for the election of Board of Directors
- At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation.

Board of Directors Term

- Board of directors are elected at the annual meeting and expire at the annual meeting.
 - Fla. Stat. 718.112 – terms do not expire at annual meeting if there are no candidates
- Cannot serve more than four 2 year terms (8 years max) (measured from July 1, 2018) unless approved by 2/3 of the membership or not enough candidates.
- If the number of vacancies equals or exceeds the number of candidates, an election is not required.

Election Eligibility – F.S. 718.112(d)

A unit owner is **not eligible to run** for election if:

1. The owner has been **suspended or removed** by the division.
2. The owner has been **convicted of any felony** in Florida or in a another state which would be considered a felony in Florida, **unless** civil rights have been restored for the last 5 years.
3. The owner is **delinquent** in the payment of assessments obligation to the Association
 - A person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation.
 - If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period.

Election Eligibility - Continued

- Nominating committees are prohibited – the candidates must nominate themselves to run.
- However, the board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the board.
- **Co-owners of a unit** may not serve together on board unless:
 - They **co-own more than 1 unit** together OR
 - **Not enough candidates to fill vacancies**

Election Procedure

- **60 days before the election** - the association shall mail, deliver, or electronically transmit the **first notice** of the election
 - Notice must include date, time and location
 - Number of Directors eligible for election
 - Information on how to run;
 - If the Association utilizes electronic voting as allowed by the Condominium Act, the notice must disclose the procedure and deadline to consent to electronic voting, if the board of administration has provided for and authorized an online voting system.

Election Procedure - Continued

- **40 days before the election** – A unit owner wishing to run must give written notice his or her intent to be a candidate which must be received by the 40 day deadline
 - Service of Notice by the candidate may be by certified mail, personal delivery, regular mail, fax, telegram, or other method of delivery to the Association;
 - Upon receipt of notice of intent to run by personal delivery, Association must provide receipt of acknowledgment of candidate notice

Election Procedure – Information Sheet

- **35 days before election** – Candidate may submit to be received an Information Sheet
 - Information sheet may contain relevant information about the candidate
 - Association is not liable for the contents of the information sheets prepared by the candidates.
 - Information sheet may not exceed one side of 8 ½ X 11 inch page

Election Procedure – 2nd Notice

- **Not more than 34 days and not less than 14 days before the Election** – Association shall mail, deliver, or electronically transmit a **second** notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates; ballot and ballot return envelopes; candidate information sheets; proxies, and other relevant documentation for the Annual Meeting.
- The second notice and accompanying documents shall not contain any communication by the board that endorses, disapproves, or otherwise comments on any candidate.

Ballot Requirements –

F.A.C. 61B-23.0021

- Written ballot shall indicate in alphabetical order by surname, all candidates
 - Failure to include all names requires an amended notice to be sent within the time limits required.
 - If there is insufficient time for a new 14 day notice – election must be delayed.
 - If an election has already taken place - a new election must be held.
- Ballot **may not list** if the Board member is an **incumbent or current positions**

Ballot Requirements - Continued

- No line for write in candidates
- No signature lines or other items which would identify the voter
- Be uniform in appearance (color, size, etc.)
 - Exceptions may exist for weighted voting or fractional voting

Inner and Outer Envelopes

- Accompanying the ballot shall be an outer return envelope addressed to the association and a smaller inner envelope in which the ballot shall be placed.
- The **exterior** of the outer envelope shall provide a space to indicate the **name of the voter, the unit or unit numbers** being voted, and shall contain a **signature space** for the voter.
- The ballot shall be placed in the inner envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed.

Inner and Outer Envelopes - Cont

- The voter shall **sign the exterior** of the outer envelope in the space provided for such signature.
 - Association may not accept any ballot which is not signed
- The envelope shall either be mailed or hand delivered to the association.
- Upon receipt by the association, **no ballot may be rescinded or changed.**

Election Procedure – Continued

- Election Day

- Elections shall be decided by a plurality of those ballots cast.
- **No quorum requirement** – however must have at **least 20% of all eligible unit owners vote**.
- The regular election must occur on the same date and location of the annual meeting.
- A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid.

Impartial Committee

- Any exterior envelopes require an impartial election committee to verify who is authorized to vote and whether the exterior envelope is in conformity with the Act.
- **“Impartial” means** a committee whose members do not include any of the following or their spouses:
 1. Current board members;
 2. Officers; and
 3. Candidates for the board.
- The signature and unit identification on the outer envelope shall be checked against the list of qualified voters and checked off on the list as having voted.
- Any exterior envelope not signed by an eligible voter shall be marked “Disregarded” or similar words, and any ballots contained therein shall not be counted.
- An impartial committee designated by the board may verify ballots in advance of the Annual Meeting, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election

Tallying the Vote

- Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners.
- The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes.

Tallying the Vote - continued

- 1. As the first order of business, ballots not yet cast shall be collected.
- 2. The exterior envelope information shall be checked against the list of voters.
- 3. **In the presence of any unit owners in attendance**, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle.
 - Upon the **commencement of the opening** of the outer envelopes or **accessing electronic vote**, the **polls shall be closed**, and no more ballots shall be accepted.
- 4. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners.

Tallying the Vote - Continued

- 5. Any inner envelope containing more than one ballot shall be marked “Disregarded”, or with words of similar import, and any ballots contained therein shall not be counted.
- 6. The Board members with the most votes win. If there is a tie, then a **run off election** with the same procedures will be conducted.
 - Within **7 days** of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a **notice of a runoff election date** and any candidate information sheets applicable.
 - The **runoff election** must be held not less than **21 days**, nor **more than 30 days**, after the date of the election at which the tie vote occurred.

Electronic Voting

- Florida Statute §718.128 provides that an “association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting”
- If the board authorizes online voting, the board must honor a unit owner’s request to vote electronically at all subsequent elections, unless such unit owner opts out of online voting
- A unit owner voting electronically pursuant Florida Statute 718.128 is counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to the statute.

Electronic Voting

- Electronic Voting System must provide each unit owner with:
 - (a) A method to authenticate the unit owner's identity to the online voting system.
 - (b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.
 - (c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.
- The system must also provide for the following and be:
 - (a) Able to authenticate the unit owner's identity.
 - (b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
 - (c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote. The receipt must include the specific vote cast, the date and time of submission, and the user identification.
 - (d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.
 - (e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.
 - (i) The electronic voting system must produce an official record that the association must maintain, which identifies the specific votes cast on each ballot and the date and time of receipt of the electronically submitted ballot.
 - (ii) For elections, electronic votes shall not be accessible to the association prior to the scheduled election. Failure to comply with this subsection will void the election and the association must renote the election following the procedures as set forth in subsection 61B-23.0021(8), F.A.C.

Implementation of Electronic Voting

- Must adopt a Board resolution to implement the electronic voting.
- The Board Resolution must provide that
 - (1) unit owners receive notice of the opportunity to vote through an online voting system,
 - (2) must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and
 - (3) must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Generally, the Board Resolution will establish the forms that each unit owner or its designated voting representative must execute to consent to electronic voting.
- Written notice of a meeting at which the Board resolution to implement electronic voting will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting in which the electronic voting system is being adopted.
 - Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

Implementation of Electronic Voting

- If 25% of the owners petition for the board to adopt a resolution for electronic voting, the board must hold a meeting within 21 days to adopt such resolution. The board must receive the petition within 180 days after the date of the last scheduled annual meeting.
- Unless the Association formally adopts electronic voting in accordance with Section 718.128, Florida Statutes, the association must designate an email address for receipt of electronically transmitted ballots. Electronically submitted ballots must meet all requirements of the Condominium Act.
 - A unit owner may electronically transmit a ballot to an email address designated by the association without complying with Section 718.112(2)(d)4 (signature of ballot) or the rules providing for the secrecy of ballots by the Division. The Association must count completed ballots that are electronically transmitted to the designated email address provided the completed ballots otherwise comply with the requirements of the Condominium Act.
 - The ballot must contain, a space for the unit owner to type his or her unit number.
 - A space for the unit owner to type his or her first name, which also functions as the signature of the unit owner for purposes of signing the ballot.
 - The following statement in capitalized letters in a font larger than any other font size used in the email from the Association to the owners:
WAIVING THE SECRECY OF YOUR BALLOT IS YOUR CHOICE. YOU DO NOT HAVE TO WAIVE THE SECRECY OF YOUR BALLOT IN ORDER TO VOTE. BY TRANSMITTING YOUR COMPLETED BALLOT THROUGH E-MAIL TO THE ASSOCIATION, YOU WAIVE THE SECRECY OF YOUR COMPLETED BALLOT. IF YOU DO NOT WISH TO WAIVE YOUR SECRECY BUT WISH TO PARTICIPATE IN THE VOTE THAT IS SUBJECT OF THIS BALLOT, PLEASE ATTEND THE IN-PERSON MEETING DURING WHICH THE MATTER WILL BE VOTED ON.
 - A unit owner must transmit the ballot no later than the scheduled time and date of the meeting.
 - There is a rebuttable presumption that an association has reviewed all folders associated with the email address designated by the association to receive ballots if the board member, officer, agent or manager provides a sworn affidavit of such review.

Maintaining Official Records

- Notices of election, notices of candidacy for election, information sheets, voting envelopes, written approval of budgets, written agreements for recall of board members, ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners shall be **maintained as part of the official records of the association for a period of 1 year from the date of the election, vote, or meeting to which the document relates.**

Appointing an Election Monitor

- **Fifteen percent** of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to **appoint an election monitor** to attend the annual meeting of the unit owners and conduct the election of directors.
- The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor.
- All **costs associated** with the election monitoring process shall be **paid by the association**.

Vacancies – F.S. 718.112(2)(d)(8)

- Any vacancy occurring before the expiration of a term may be filled by the vote of the majority of the remaining directors or by the sole remaining director if permitted by the governing documents.
- Alternatively, the Board may also hold election to fill the vacancy.
- Appointed or elected Board member serves the remainder of the term of office until the next general election unless otherwise set forth in the governing documents.

Enforcing the Declaration and Alternate Dispute Resolution

Association Obligation to Enforce

- The Condominium Act requires the Association to maintain and enforce the Declaration, Rules and Regulations, and Florida Statutes.
- The Association must timely and uniformly enforce the rules.
- Failure to enforce restrictions timely may result in the forfeiture of enforcement rights:
 - Unit owners may claim selective enforcement.
 - The failure to enforce due to inaction may also be considered malfeasance or nonfeasance and a breach of the Board's fiduciary duty.

Notice of Violation

- Written Notice should be given to properly document any violations and give the unit owner a voluntary opportunity to correct the violation.
 - Notice of violations should be uniform, contain a clear statement of the violation, reference the rule that is being violated, and provide a deadline for compliance
 - If voluntary compliance is not achieved, continued documentation of the violation and each instance thereof is critical to enforcing the association rights.

Authority to Fine

- The Condominium Act provides the Association tools to fine unit owners for noncompliance with the Declaration.
- No fine may exceed \$100.00 per violation
 - However, a fine may be levied on the basis of each day of a continuing violation but may not exceed \$1,000.00 in total.
- Fine cannot become a lien against the property.

Documentation and Opportunity for Hearing

- Like any notice of violation, any fine should be clearly documented for the Association records.
- Board must first hold properly noticed Board Meeting to levy the fine against the offending owner
- Then Association must give at least 14 days notice to offending owner, tenant, or guest of the next fining committee hearing which provides the violator a reasonable opportunity to be heard and contest the fine.
- A hearing must be held for the owner, tenant or guest by the fining committee.
 - The hearing must be held before an impartial committee of unit owners as to whether the fine will be approved or rejected.
 - The committee cannot be made up of board members, officers, employees, or the spouse, parent, child, brother, sister of a board member, an officer or employee of the Association.
 - If approved by majority vote of the committee, the Association must notify the unit owner of the confirmation of the fine.
 - If rejected, no fine can be imposed.
 - Fine is due within 5 days of Association's notice confirming the fine.

Suspension of Use Rights

- 718.303(3)(a) – An association may suspend for a reasonable period of time, the use rights of a unit owner or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the Association
- 718.303(4) – An association may suspend the right of a unit owner or their guests to use the common elements, common facilities, or other association property of a unit owner more than 90 days delinquent in paying a monetary obligation due to the association,
 - Does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.
 - The fining requirements of 14 day notice and an opportunity for a hearing are not required to suspend use rights for delinquency.
 - All suspensions must still be approved at a properly called board meeting. After suspension Association must give notice to unit owner.

Suspension of Voting Rights

- 718.303(5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent and for which over \$1,000.00 owed.
 - A voting interest allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve .
 - The fining requirements of 14 day notice and an opportunity for a hearing are not required to suspend use rights for delinquency.
 - At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation.
 - Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect.
 - All suspensions must still be approved at a properly called board meeting. After suspension Association must give notice to unit owner.
 - The suspension ends upon full payment of all obligations currently due or overdue the association.

Enforcement Actions

- Enforcement Actions can take 1 of 3 forms
 - 1. Voluntary mediation with mediators provided by the Division or through Citizen Dispute Settlement Centers.
 - 2. Mandatory nonbinding arbitration under procedures established by the Division.
 - 3. Filing formal legal proceedings in the Circuit Court.
 - May require pre-suit demand for mediation

Mediation –Section 718.1255(5)

- Mediation is a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. (Blacks Law Dictionary).
- The Division has a list of available local volunteer and paid mediators. Contact the Division at 1-850-488-1122 or by writing to obtain a copy.
- Allowed to pursue presuit mediation (in lieu of arbitration) prior to bringing lawsuit in many cases.

Mediation - Continued

- Benefits to Mediation:
 - **Cost effective** technique to settle disputes between the Association and unit owners.
 - Informal and **less adversarial** process.
 - Generally **faster** resolution of the dispute.

Mediation - Continued

- Mediation is a **voluntary process** and the mediator cannot force the parties to agree to a settlement.
- Parties must select a mutually acceptable mediator.
- The mediator is an impartial party.
- The mediator only facilitates the parties to come to a settlement by suggesting solutions. The mediator does not render a decision or enforce a settlement.
- Expenses of mediation are shared by the parties

Mandatory Nonbinding Arbitration

F.S. 718.1255

- A method of dispute resolution involving one or more neutral third parties who hears the facts of a case and then renders a decision on the merits.
- The **decision of the arbitrator is final if not challenged** in the Circuit Court within 30 days.

Definition of Dispute for arbitration

- The term “dispute” means any disagreement between two or more parties that involves:
 - The authority of the board of directors to:
 - 1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances.
 - 2. Alter or add to a common area or element.
 - The failure of a governing body, when required by this chapter or an association document, to:
 - 1. Properly conduct elections.
 - 2. Give adequate notice of meetings or other actions.
 - 3. Properly conduct meetings.
 - 4. Allow inspection of books and records .

Matters not eligible for arbitration

- A dispute does not qualify for arbitration if it relates to:
 - 1. title to any unit or common element
 - 2. the interpretation or enforcement of any warranty
 - 3. the levy of a fee or assessment
 - 4. collection of an assessment levied against a party
 - 5. the eviction or other removal of a tenant from a unit
 - 6. alleged breaches of fiduciary duty by one or more directors
 - 7. claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property

Notice of Intention to Petition Division for Non-Binding Arbitration

- **Before a petition** for nonbinding arbitration is filed with the Division, **a notice of intention to seek the intended arbitration must be sent to the opposing party**
- The notice must include
 - 1. Notice of the specific nature of the dispute;
 - 2. A demand for relief and a reasonable opportunity for the other party to comply with the request or to provide other appropriate relief
 - 3. Must state that if relief is not granted, then an arbitration petition or other legal action will be filed
- **Failure to comply** with the advance notice requirements will subject a petition for arbitration to **dismissal** for failing to meet the required preconditions

Petition for Mandatory Non-binding Arbitration

- Petition must be accompanied with a \$50 filing fee.
- The petition must recite and have attached supporting proof of the nature of the dispute and notice requirements.
- Upon receipt, Division will determine existence of dispute and compliance with preconditions. Once verified, Division will serve copy of the Petition on the opposing party.

Referral to Mediation

- **Either party may request mediation** after a petition has been filed with the Division.
- Once a request is made, the arbitration will contact the opposing party and determine if the party agrees to be referred to mediation
- Even if both parties do not agree, the arbitrator still has the power to refer the case to mediation
- Failure to attend an ordered mediation can result in sanctions including:
 - the striking of any pleadings filed
 - the entry of an order of dismissal or default if appropriate
 - the award of costs and attorneys' fees incurred by the other parties.
- If the mediator **declares an impasse** after a mediation conference has been held, the arbitration **proceeding terminates**, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties

Arbitrator Subpoena Power

- Arbitration shall be conducted according to rules adopted by the division.
- At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure.

Final Decision of Arbitrator

- The arbitration decision shall be presented to the parties in writing.
- An arbitrator's decision is final if:
 - If the parties agreed to be bound by the final decision or
 - If a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days.
 - The right to file for a trial de novo entitles the parties to file a complaint in the appropriate court for a judicial resolution of the dispute.
- **The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator.**

Enforcement

- Any party to an arbitration proceeding may **enforce an arbitration award** by filing a petition in a court of competent jurisdiction in which the condominium is located.
 - Before filing the Petition, the time for appeal by the filing of a complaint for trial de novo must have expired (30 days following final decision of arbitrator).
- A **mediation settlement may also be enforced** through the county or circuit court and any **costs and fees incurred in the enforcement of a settlement agreement** reached at mediation **must be awarded to the prevailing party in any enforcement action.**

Association Official Records

Official Association Records – F.S. 718.111 (12)

- The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event that the official records are lost, destroyed, or otherwise unavailable, the obligation to maintain the official records includes a good faith obligation to obtain and recover those records as is reasonably possible.
- An association is required to keep and maintain as part of their official records:
 1. Copies of the plans, permits, warranties and other items provided by the developer
 2. A copy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
 3. A copy of the recorded bylaws of the association and each amendment to the bylaws
 4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
 5. A copy of the current rules of the association.
 6. A book or books or electronic records that contain the minutes of all meetings of the association, the board of administration, any committee, and the unit owners, and a recording of all such meetings that are conducted by video conference. If there are approved minutes for a meeting held by video conference, recordings of meetings that are conducted by video conference must be maintained for at least 1 year after the date the video recording is posted as required under paragraph (g)

Official Association Records – Cont.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission.
- The e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided, or if the unit owner has expressly indicated that such personal information can be shared with other unit owners and the unit owner has not provided the association with a request to opt out of such dissemination with other unit owners.
 - An association must ensure that the e-mail addresses and facsimile numbers are only used for the business operation of the association and may not be sold or shared with outside third parties. If such personal information is included in documents that are released to third parties, other than unit owners, the association must redact such personal information before the document is disseminated
 - The association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices unless such disclosure was made with a knowing or intentional disregard of the protected nature of such information.

Official Association Records – Cont.

- 8. All current insurance policies of the association and condominiums by the association.
- 9. Current copy of any management agreement, lease or other contract which the association is a party or the unit owners may have an obligation or responsibility.
- 10. Bills of sale or transfer for all property owned by the Association.

Official Association Records – Cont.

- 11. Accounting records for the association and separate accounting records for each condominium the association operates including but not limited to:
 - Accurate, itemized, and detailed records of all receipts and expenditures including all bank statements and ledgers.
 - All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.
 - 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 by the association.

Official Association Records - Cont

- 12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.
- 13. All rental records if the association is acting as agent for the rental of condominium units.
- 14. Current Frequently Asked Questions and Answers Sheet.
- 15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.
- 16. Bids for materials, equipment of services.
- 17. All affirmative acknowledgements made pursuant to s. 718.121(4)(c)
- 18. A copy of all building permits.
- 19. A copy of all satisfactorily completed board member educational certificates
- 20. A copy of all affidavits required by the Condominium Act.
- 21. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

Official Association Records - Cont

- The official records specified in 1-6. must be permanently maintained from the inception of the association.
- Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid.
- All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law.

Inspection Requests

- The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee.
- An Association may comply with the Florida Statutes by having a copy of the official records available for inspection and copying at the Association or viewable by electronic means via a website or computer screen that is printable upon request.
- If the requested records are posted on an association's website, or are available for download through an application on a mobile device, the association may fulfill its obligations by directing to the website or the application all persons authorized to request access.

Inspection Request -Cont

- A unit owner has the right to inspect the records which includes the right to make or obtain copies, at the reasonable expense to the unit owner.
- Unit Owner may use tablet, smart phone, portable scanner or similar device to obtain copies without charge
- The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.
- In response to a written request to inspect records, the association must simultaneously provide to the requestor a checklist of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist for 7 years. An association delivering a checklist creates a rebuttable presumption that the association has complied with the record inspection rules

Denial of Access

- The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with the request.
- A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply.
- Minimum damages shall be \$50 per calendar day up to 10 days, the calculation begins on the 11th working day after receipt of the written request. Therefore the Association is subject up to a \$500.00 fine for failing to comply with inspection requests.

Denial of Access - Cont.

- A director or member of the board or association or a community association manager who willfully and knowingly or intentionally commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must be removed from office and a vacancy declared.
- Any person who willfully and knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who willfully and knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared.
- A person who willfully and knowingly or intentionally refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be removed from office and a vacancy declared.

Records not subject to Inspection

- 1. Documentation that is protected by the *attorney client privilege* or *work product privilege*. This includes records which reflect mental impressions, conclusions, litigation strategy, or legal theory of the attorney or the association.
- 2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.
- 3. Personnel records of association employees, including, but not limited to, disciplinary, payroll, health, and insurance records.

Records not subject to inspection – Cont.

- 4. Medical records of unit owners.
- 5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements.
- 6. Any electronic security measure that is used by the association to safeguard data, including passwords.
- 7. The software and operating system used by the association which allows manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Website Requirements

- Each Association with 150 units or more (25 units effective January 1, 2026) must have a website.
- Website Requirements
 - (I) An independent website, application, or web portal wholly owned and operated by the association; or (II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.
 - The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.
 - Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

Records to be Posted on the Web site

- Records must be posted within thirty (30) days of the date the official record is created
- Records to be posted:
 - The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
 - The recorded bylaws of the association and each amendment to the bylaws.
 - The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.
 - The rules of the association
 - A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed \$500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

Records to be Posted on the Web site

- Records to be posted:
 - The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.
 - The annual financial report and any monthly income or expense statement to be considered at a meeting.
 - The certification of each director required by s. 718.112(2)(d)4.b.
 - All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.
 - Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).
 - A copy of all affidavits required by the Condominium Act

Records to be Posted on the Web site

- Records to be posted:
 - The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled “Notices” which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.
 - Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).
 - The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.
 - The association’s most recent structural integrity reserve study, if applicable.
 - Copies of all building permits issued for ongoing or planned construction.
 - Board meeting minutes for the previous 12 months
 - Video recordings or hyperlink to the video recording for any board, committee, or unit owner meeting conducted by video conference for the preceding 12 months

Financial Reporting Requirements

Annual Financial Report

- Within 90 days of the end of the Association's fiscal year, The Board of Administration must prepare a financial report detailing the year's financial activities
- Within 21 days after it is completed but no later than 180 days after the end of the fiscal year, the Association must deliver a copy of the report to each unit owner by mail at their mailing address, property address, e-mail address, or facsimile number a copy of the report and a notice that a copy of the most recent financial report will be mailed or hand delivered, or electronically delivered to the unit owner without charge upon 5 business days after receipt of a written request
 - Evidence of compliance of mailing must be by affidavit executed by officer or director of association

Annual Financial Report – 718.111(13)

- Each year, the Association is required to prepare a financial report which sets forth the Association's financial receipts and expenditures and details the financial position of the company.
- Financial report can be one of several forms
 - Financial Statements
 - Compiled
 - Reviewed
 - Audited
 - Cash Receipts Report
- The financial statements must be prepared on the accrual basis using fund accounting with General Accepted Accounting Principles.

Financial Statement Requirements

- Pursuant to F.A.C. 61B-22.006, Financial Statements are required to contain:
 - (a) Accountant's or Auditor's Report;
 - (b) Balance Sheet;
 - (c) Statement of Revenues and Expenses;
 - (d) Statement of Changes in Fund Balances;
 - (e) Statement of Cash Flows; and
 - (f) Notes to financial statements.

Cash Receipts Report Requirements

- (a) The report shall be prepared using a cash basis method of accounting.
- (b) The report shall include the reserve disclosures.
- (c) The report shall include the special assessment disclosure.
- (d) If the association maintains limited common elements and the expense is apportioned to those units entitled to the exclusive use of the limited common elements the report shall contain the limited common element disclosures
- (e) The financial reports of multicondominium associations shall separately disclose the following items:
 - 1. The receipts and expenditures directly associated with specific condominiums; and
 - 2. The receipts and expenditures of the association that are not directly associated with specific condominiums.

Financial Statement Disclosures

- Financial Statements shall contain the following disclosures
 - The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:
 1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;
 2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;
 3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;
 4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;
 5. The amount of annual funding required to fully fund each reserve account, or pool of accounts, over the remaining useful life of the applicable asset or group of assets;
 6. The manner by which reserve items were estimated, the date the estimates were last made, the association's policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and
 7. If the developer has established converter reserves pursuant to Section 718.618(1), F.S. each converter reserve account shall be identified and include the disclosures required by this rules.

Financial Statement Disclosure - Continued

- The method by which income and expenses were allocated to the unit owners;
- The specific purpose or purposes of any special assessments to unit owners pursuant to Section 718.116(10), F.S., and the amount of each special assessment and the disposition of the funds collected;
- The amount of revenues and expenses related to limited common elements shall be disclosed when the association maintains the limited common elements and the expense is apportioned to those unit owners entitled to the exclusive use of the limited common elements;

Compiled Financial Statements

- Compiled Financial Statements
 - A compiled financial statement is a basic aggregation of the Association's financial information in accordance with Generally Accepted Accounting Principles.
 - No assurance is given as to the reliability of the financial statement.

Reviewed Financial Statements

- Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services
- To perform the review, the CPA must obtain a general understanding of: the Condominium and their operations, their accounting records, qualifications of their accounting personnel, the accounting basis on which the financial statements are presented, and the form and content of the financial statements.
- The CPA then reviews the information supplied by the Association and makes specific inquiries relating to accounting policies, record keeping and accounting practices, actions of the Board of Directors, and changes in business activities.
- Upon completion of a review, the CPA will issue a report that provides limited assurance that the financial statements are free of material misstatements or false/missing information and are found to be accurate, complete and fairly presented to meet the requirements of GAAP.

Audited Financial Statements

- Audited Financial Statements are the most comprehensive financial statements and are an independent review and confirmation of the Association's financial records
- Audited financial statements shall be audited in accordance with generally accepted auditing standards.
- A CPA will make an actual inspection of the association receipts and expenses and verify the account balances
- Audited Financial Statements are generally accompanied by an opinion of the CPA
 - Unqualified Opinion - states that in reviewing the documents submitted by the organization, the accountant is in agreement with the methods used to prepare those documents. In effect, the accountant is stating that the audit is accurate and complete.
 - Qualified Opinion - the accountant indicates that he or she is not in agreement with the methods used to prepare the supporting financial documents. This does not necessarily mean that the accountant thinks something unethical is happening. It could, however, mean that the accountant found instances where expenses should have been assigned to a different category, or there was some errors found in line items, such as transposed digits
 - No Opinion – If the CPA is unable to determine from the records inspected and supplied that there is sufficient basis to verify the financial statements prepared

Cash Receipts Report

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

What type of Financial Report is required?

- The extensiveness of the financial reporting required is dependent on the total revenues of the association
 - An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.
 - An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
 - An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
 - An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.
- All reporting requirements must be in accordance with GAAP (Generally Accepted Accounting Procedures).

What is included in Annual Revenues?

- Annual revenues include but are not limited to:
 - Regular and special assessments
 - Interest income
 - Late fees collected
 - Insurance proceeds
 - Fees and fines collected
- Contact a Certified Public Accountant to determine reporting requirements for your Association

More Extensive Financial Reporting

- An association may prepare, without a meeting of or approval by the unit owners:
 1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;
 2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or
 3. Audited financial statements if the association is required to prepare reviewed financial statements.

Waiver of Financial Reporting Requirement

- If approved by a majority vote of all the voting interests, an association may waive the statutory reporting requirements as set forth below:
 1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
 2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
 3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.
- Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken.
- Cannot waive reporting for consecutive years

Official Record Requirements

- Copies of the financial reporting must be maintained at the Association and be made available to any current unit owner or prospective purchaser at a reasonable cost.
- A copy must be provided to any purchaser of a condominium unit at the seller's expense and each purchaser is required to acknowledge receipt of the financial report prior to obtaining title to the property.

Investment of Association Funds

- A board must use its best efforts to make prudent investment decisions to consider risk and return to maximize returns on invested funds
- Association may invest reserve funds in a CDs, or a depository accounts at a community bank, savings, bank, commercial bank, savings and loan association or credit union without a vote of the unit owners

Budgeting

Goals

- Planning
- Theory
- Estimating/ Forecasting
- Operating
- Reserves

Planning

- Establish a time line
- Six to nine month timeline of the fiscal year
 - Preliminary
 - Committees
 - Workshops
 - Follow ups
 - Reviews and BOD Meetings

Participants

- Your Team
 - Property Manager
 - President
 - Treasurer
 - Other Key Officers/ directors
 - Unit Owner(s) – committee Members
 - Accountant and Auditor

Types of Budgeting

The Bottom Up

- What are your costs???
- True budgeting
- Pro Association
- Healthier Financials
- Are there major changes in services?

Types of Budgeting

Top - Down

- What is my revenue
- Imaginary Budget
- Pro-unit owners
- Are Members anticipating the same assessments as last year

Estimating / Forecasting

- Association Documents
- Most recent accounting reports
- Last Year's budget & notes
- All contracts
- Insurance Policies

Accounting Data

- Year to date ledger
- Comparative monthly results
- Look for unusual fluctuations, e.g.
 - Water bills disproportionate due to water leaks
 - Unbudgeted expenditures

Operating Budget Requirements

- Budget must include estimated revenues and expenses
- Revenues must include, if applicable
 - Assessments
 - Interest
 - Insurance Proceeds
 - Other forms of income (application fees, laundry income, etc.)

Expenses for the association and condominium:

- Administration of the association
- Management fees
- Maintenance
- Rent for recreational and other commonly used facilities
- Taxes
- Insurance
- Security provisions
- Other expenses
- Operating capital
- Reserves
- Division Fees

Other Required Information

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

Notice

- Notice of budget meeting must be mailed, delivered or electronically transmitted not less than 14 days prior to the meeting
- Proposed budget must be included with the notice
- Reserves – must be shown as fully funded in proposed budget
- Both the proposed and adopted budgets must be maintained in the official records, along with an affidavit that the budget meeting notice and proposed budget have been mailed to owners

Adoption

- Unless documents call for unit owners to adopt the budget, the Board must adopt a budget with fully funded reserves (unless non-structural reserves have been properly waived or reduced by unit owners after mailing of proposed budget.)

The 115% Rule

- If assessments are greater than 115 of the previous year assessments, unit owners may be entitled to consider an alternate budget
- Calculation
 - From the total budget assessment, subtract those that result from:
 - Reserves
 - Insurance premiums
 - Expenses not anticipated to be incurred on regular/annual basis for items listed in Section 718.112(2)(g) (SIRS components)

The 115% Rule

- If Board proposes a budget which requires assessments which exceed 115% of assessments for the preceding year the Association must simultaneously propose a substitute budget that does not include any discretionary expenditures that are not required to be in the budget.
 - Excludes required reserves, anticipated expenses which the board does not anticipate to be incurred on a regular or annual basis for repair, or replacement, or maintenance of structural items listed in Section 718.112(2)(g)
- Substitute budget must be proposed at the budget meeting before the adoption of the annual budget by the board
- Copy of the notice and substitute budget must be mailed at least 14 days prior to the meeting which the substitute budget will be proposed.
- If approved by a majority of all voting interest, the substitute budget goes into effect. If the Association does not receive sufficient vote from a majority of all voting interest, the Board's original proposed budget may be adopted.

Reserves

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

Reserve Requirements (NON-SIRS)

- **Must include (NON-SIRS ONLY):**
 - Roof replacement;
 - Building painting;
 - Pavement resurfacing;
 - Any other item of deferred maintenance or capital expenditure exceeding \$25,000 (or inflation adjusted increases approved by Division),
- Proposed budget must include **fully funded** reserves.
- Reserve schedule must be included with proposed budget.

Reserve Calculations

. Calculation Requires

- Total estimated life;
- Remaining estimated life (# years);
- Anticipated replacement/deferred maintenance cost;
- Anticipated beginning balance in reserve fund.
- Straight Line vs Pooled Funding Methodology
- Interest must remain in reserve accounts

Straight Line Method Formula

- Straight line (component funding) requires separate funding for each reserve component based estimated replacement cost and remaining useful life of each component. Reserve funds for a specific component can only be used for that component.

- Anticipated replacement/deferred maintenance cost
less Anticipated beginning balance in reserve fund
= Remaining reserves needed

Remaining reserves needed **divided by** Remaining life (# years)

= Amount needed in current year to fully fund

Pooled Reserves

- Pooled reserves involve consolidating reserve funds into a single reserve account, rather than maintaining separate accounts for each individual component. Allows for greater flexibility for use of reserve funds.
- An association may have a single source of funds to pay for multiple categories of reserve expenses.

Formula for an association that maintains a pooled account of two or more of the required reserve assets, Pooled Method:

The amount of the contribution to the pooled reserve account shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect

plus The projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool

Pooled Method Continued

= **or** > the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis.

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

Pooled Method Continued

- Reserve accounts may be pooled for 2 or more required components. Structural components required by a SIRS study may only be pooled with other similar SIRS components.
- There must be sufficient funding to ensure that available funds meet or exceed projected expenses for all components in the reserve pool
- A vote of members is not required for the Board to change the accounting method to a pooling method or a straight line method.

Waiving Reserves (NON-SIRS)

- Cannot be waived for Structural Integrity Reserve Studies if required by Condominium Act (discussed later)
- Requires majority vote of the entire community to waive or reduce funding for non-structural reserves at a unit owner meeting
- Proxies must contain language in bold font larger than any other information on the proxy
 - **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

Structural Integrity Reserve Studies

Structural Integrity Reserves

Structural Integrity Reserve Study

- Structural integrity reserve studies be completed for future major repairs or deferred maintenance for any condominium or cooperative building over three (3) *habitable stories in height*.
- A willful and knowing failure to complete the required reports shall constitute a breach of an officer or directors fiduciary duty. An officer or a director must sign an affidavit acknowledging receipt of the completed structural integrity reserve study.
- **The report must be completed by December 31, 2025.**
- However, if the Association completes a milestone inspection, the association may delay performance of a structural integrity reserve study for no more than 2 consecutive budget years immediately following the milestone inspection to allow the association to focus on its financial resources on completing the repairs and maintenance recommendations of the milestone inspection
- Thereafter, the reserve study must be completed at least every 10 years.
- The reports must be maintained for at least 15 years after completion of the study.
- The structural reserve study must be performed by an engineer, licensed architect or certified reserve analyst.
- Budgets must be funded in accordance with the structural integrity reserve study for any budget adopted after December 31, 2024

SIRS - Components

- The report must state the estimated replacement costs, estimated remaining useful life, and provide recommended annual reserve amounts to achieve proper funding of structural reserves for the following minimum structural components:
 - Roof
 - Structure, including load bearing walls and other primary structural members and primary structural systems as defined in s. 627.706
 - Fireproofing and fire protection systems
 - Plumbing
 - Electrical Systems
 - Waterproofing and exterior painting
 - Windows and exterior doors
 - Any other item that has a deferred maintenance expense or replacement cost that exceeds \$25,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the visual inspection portion of the structural integrity reserve study.
- For items that are not required by SIRS, the amount of recommended reserves must be separately identified in the reserve study as an item for which reserves are not required

SIRS- Continued

- Establishes that as a minimum, SIRS must identify each item of the property being inspected, state the estimated remaining useful, and the estimated replacement cost or deferred maintenance expense of each item; provide a funding schedule and recommended annual reserve amount.
- The funding schedule must at a minimum include reserves schedule funding to ensure that each budget year is sufficient to maintain the reserve cash balance above zero. The study may recommend other types of reserve funding schedules provided that each schedule is sufficient to meet maintenance requirements.
- For those items with an estimated useful life of more than 25 years or whose estimated useful life is not readily ascertainable, an association is not required to reserve for replacement costs, but must reserve for any deferred maintenance expenses.
- Associations may adjust reserve studies to account for inflation adjustments
- **For budgets adopted after December 31, 2024**, members of all unit owner controlled association may not waive reserves or provide less than full funding of reserves for structural items. Additionally, unit owners may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the intended purpose.
- Developers must establish an initial reserve study for newly constructed condominiums and cooperatives and prohibits the waiver of reserve funding by the Developer prior to turnover.
- Division of Condominiums and Cooperatives may approve alternative funding methods for funding reserves of large multi-condominiums which operate at least 25 condominiums which may be reasonably expected to satisfy the Association's reserve funding obligation. Presently, no Division Rules exist for any alternative funding method for large multicondominiums.

SIRS- Continued

- Reserves for items listed as SIRS components may be funded by regular assessments, special assessments, lines of credit or loans.
- If funded by a special assessment, line of credit, or loan, requires approval of a majority vote of the total voting interest of the Association
- An Association that must have a structural integrity reserve study may secure a line of credit or loan to fund capital expenses required by milestone inspection under s. 553.899 or a structural integrity reserve study. The line of credit must be sufficient to fund the cumulative amount of previously waived or unfunded portions of reserve funding as required by the structural integrity reserve study.
- Funding must be immediately available for access by the Board to fund required repair, maintenance or replacement expenses without further approval of the members of the Association.
- If the SIRS is performed before association has approved a special assessment or secured a loan, the SIRS must be updated to reflect the funding method selected by the Association and its effect on the reserve funding schedule.
- A special assessment, line of credit, or loan secured must be included in the Association's annual financial statement

SIRS- Continued

- The Association must obtain an updated structural integrity reserve study before adopting any budget in which the reserve funding from regular assessments, special assessments, lines of credit, or loans do not align with the funding plan from the most recent version of the structural integrity reserve study.
- Any design professional or contractor who bids to perform a structural integrity reserve study must disclose in writing to the association his or her intent to bid on any services related to maintenance, repair, or replacement that is recommended by the structural integrity reserve study.
- Any design professional or contractor who submits a bid to the association for performing any services recommended by the structural integrity reserve study may not have an interest, directly or indirectly, in the firm or entity providing the structural integrity reserve study or be a relative of any person having a director or indirect interest in such firm, unless such relationship is disclosed in writing.

Structural Milestone Safety

Milestone Inspection– Condo/Coop Structural Safety

Mandatory Structural Inspections

- Mandates statewide structural inspections of residential and mixed-use condominium and cooperative buildings and requisite milestone inspections for buildings that are three (3) stories or more in height.
- ***The failure to complete mandatory milestone inspections can constitute a breach of an officer's or directors fiduciary duties.***
- The local municipalities will be responsible for notifying the Association of the need for compliance with Phase One inspections within 180 days of the notice.
- The Association must within 14 days after receipt of the written notice from the local building department, notify its membership of requirement to complete the milestone inspection and advise the deadline date for completion of the structural integrity inspection

Milestone Inspection - Deadline

- Inspection Phases – dependent on date of construction of building
 - Must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.
 - If a building reached 30 years of age before July 1, 2022, the building's initial milestone inspection must be performed before December 31, 2024.
 - If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025.
 - Nonetheless, local enforcement agencies can still require the inspection be completed at 25 years if they determine that local circumstances, including environmental conditions such as proximity to salt water require earlier inspection.
 - The local enforcement agency is given latitude to extend the inspection period by a showing of good cause by the Association that the inspection cannot be completed timely and **the Association has entered into a contract** with an engineer or architect to perform the milestone inspection.

Milestone Inspection - Phases

- **Phase One** requires a licensed engineer or architect to perform a visual examination of the building(s), including major structural components and provide a qualitative assessment. If no deterioration is found, a Phase Two inspection is not required.
- If the engineer or architect determines that structural deterioration is present, a **Phase Two** inspection must be performed. This may include destructive and non-destructive testing. The inspection may be as extensive or limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound.
- Upon completion of **Phase One** or **Phase Two** milestones, the engineer must issue a sealed report indicating manner and type of inspection, identifying any substantial structural deterioration, state whether any unsafe or dangerous conditions exist, recommend whether remedial or preventative repairs are required, or identify other items requiring further inspection.
- Association must notify its membership and provide copy of the report within 45-days after receipt of the inspection reports.

Milestone Inspection - Phases

- After a **Phase Two** inspection is complete, the condominium or cooperative association must schedule or commence repairs for structural repairs no later than one (1) year after issuance of the report.
- A licensed architect or engineer who bids to perform a milestone inspection must disclose in writing to the association his or her intent to bid on any services related to any maintenance, repair or replacement which may be recommended by the milestone inspection
- Design professional or contractors who submits a bid to the association to perform the work may not have an interest in the firm or entity providing the milestone inspection, or be a relative (within 3rd degree by blood or marriage) to the firm providing the milestone inspection.
- County Commissioners may adopt ordinances setting forth shorter time frames for repairs and most recently, the cities are refusing to provide additional extensions so Associations cannot rely on more time and need to act expeditiously.

Closing Remarks

- Feel free to contact Rhonda Hollander, Esq., Carlos Lopez, Esq. or Matthew Goode, Esq., if you wish to schedule an appointment so that we can assist you with any of your legal needs.
- Telephone: 954-523-3888
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