

## Council Substitute for House Bill No. 995

An act relating to community associations; amending s. 468.431, F.S.; defining the term “community association management firm”; redefining the term “community association manager” to apply only to natural persons; amending s. 468.4315, F.S.; revising membership criteria for members of the Regulatory Council of Community Association Managers; requiring the council to establish a public education program; providing for council members to serve without compensation but be entitled to receive per diem and travel expenses; providing responsibilities of the council; amending s. 468.432, F.S.; providing for the licensure of community association management firms; providing application, licensure, and fee requirements; providing for the cancellation of the license of a community association management firm under certain circumstances; providing that such firm or similar organization agrees that, by being licensed, it shall employ only licensed persons providing certain services; amending s. 468.433, F.S.; providing for the refusal of an applicant certification under certain circumstances; amending s. 468.436, F.S.; requiring the Department of Business and Professional Regulation to investigate certain complaints and allegations; providing complaint and investigation procedures; providing grounds for which disciplinary action may be taken; amending s. 718.111, F.S.; providing that a director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action; providing duties of officers, directors, and agents of a condominium association and liability for monetary damages under certain circumstances; providing that a person who knowingly or intentionally fails to create or maintain, or who defaces or destroys certain records, is subject to civil penalties as prescribed by state law; requiring that a copy of the inspection report be maintained as an official record of the association; requiring official records of the association to be maintained for a specified minimum period and be made available at certain locations and in specified formats; providing that any person who knowingly or intentionally defaces, destroys, or fails to create or maintain accounting records is subject to civil and criminal sanctions; prohibiting accessibility to certain personal identifying information of unit owners by fellow unit owners; requiring that the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation adopt certain rules; requiring certain audits and reports to be paid for by the developer if done before control of the association is turned over; restricting a condominium association from waiving a financial report for more than a specified period; amending s. 718.112, F.S.; prohibiting a voting interest or a consent right allocated to a unit owner from being exercised under certain circumstances; requiring the board to address certain agenda items proposed by a petition of a specified percentage of the unit owners; providing requirements for the location of annual unit owner meetings; revising terms of service for

board members; prohibiting certain persons from serving on the board; requiring the association to provide a certification form to unit owners for specified purposes; authorizing an association consisting of a specified maximum number of units to provide for different voting and election procedures in its bylaws by affirmative vote of a majority of the association's voting interests; revising requirements related to the annual budget; requiring proxy questions relating to reserves to contain a specified statement; providing for the removal of board members under certain circumstances; requiring that directors who are delinquent in certain payments owed in excess of certain periods of time be suspended from office or deemed to have abandoned their offices; requiring that directors charged with certain offenses involving an association's funds or property be suspended from office pending resolution of the charge; providing for the reinstatement of such officers or directors under certain circumstances; amending s. 718.1124, F.S.; providing that any unit owner may give notice of his or her intent to apply to the circuit court for the appointment of a receiver to manage the affairs of the association under certain circumstances; providing a form for such notice; providing for the delivery of such notice; providing procedures for resolving a petition submitted pursuant to such notice; requiring that all unit owners be provided written notice of the appointment of a receiver; amending s. 718.113, F.S.; providing a statement of clarification; authorizing the board to install certain hurricane protection; prohibiting the board from installing hurricane shutters under certain circumstances; providing for the maintenance, repair, and replacement of hurricane shutters or other hurricane protection; providing that a vote of the owners is not required under certain conditions; prohibiting a board from refusing to approve the installation or replacement of hurricane shutters by a unit owner under certain conditions; requiring that the board inspect certain condominium buildings and issue a report thereupon; providing an exception; prohibiting the board from refusing a request for reasonable accommodation for the attachment to a unit of religious objects meeting certain size specifications; amending s. 718.115, F.S.; providing the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection shall constitute either a common expense or shall be charged individually to the unit owners under certain conditions; amending s. 718.117, F.S.; requiring that all unit owners be provided written notice of the appointment of a receiver; providing for the delivery of such notice; amending s. 718.121, F.S.; providing requirements and restrictions for liens filed by the association against a condominium unit; providing for notice and delivery thereof; creating s. 718.1224, F.S.; prohibiting strategic lawsuits against public participation; providing legislative findings and intent; prohibiting a governmental entity, business organization, or individual from filing certain lawsuits made upon specified bases against a unit owner; providing rights of a unit owner who has been served with such a lawsuit; providing procedures for the resolution of claims that such suit violates certain provisions of state law; providing for the award of

damages and attorney's fees; prohibiting associations from expending association funds in prosecuting such a suit against a unit owner; amending s. 718.1255, F.S.; revising legislative intent concerning alternative dispute resolution; creating s. 718.1265, F.S.; authorizing an association to exercise certain powers in instances involving damage caused by an event for which a state of emergency has been declared; limiting the applicability of such powers; creating s. 718.127, F.S.; requiring that all unit owners be provided written notice of the appointment of a receiver; providing for the delivery of such notice; amending s. 718.301, F.S.; providing circumstances under which unit owners other than a developer may elect not fewer than a majority of the members of the board of administration of an association; requiring a turnover inspection report; requiring that the report contain certain information; amending s. 718.3025, F.S.; requiring that maintenance and management services contracts disclose certain information; amending s. 718.3026, F.S.; revising a provision authorizing certain associations to opt out of provisions relating to contracts for products and services; removing provisions relating to competitive bid requirements for contracts executed before a specified date; providing requirements for any contract or transaction between an association and one or more of its directors or any other entity in which one or more of its directors are directors or officers or have a financial interest; amending s. 718.303, F.S.; providing that hearings regarding noncompliance with a declaration be held before certain persons; amending s. 718.501, F.S.; providing authority and responsibilities of the division; providing for enforcement actions brought by the division in its own name; providing for the imposition of penalties by the division; requiring that the division issue a subpoena requiring production of certain requested records under certain circumstances; providing for the issuance of notice of a declaratory statement with respect to documents governing a condominium community; requiring that the division provide training and education for condominium association board members and unit owners; authorizing the division to include certain training components and review or approve training programs offered by providers; requiring that certain individuals cooperate with the division in any investigation conducted by the division; amending s. 718.5012, F.S.; providing additional powers of the ombudsman; amending s. 718.50151, F.S.; redesignating the Advisory Council on Condominiums as the "Community Association Living Study Council"; providing for the creation of the council; revising legislative intent with respect to the appointment of council members; providing functions of the council; amending s. 718.503, F.S.; providing for disclosure of certain information upon the sale of a unit by a non-developer; requiring the provision of a governance form by the seller to the prospective buyer; requiring that such form contain certain information and a specified statement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 468.431, Florida Statutes, is amended to read:

468.431 Definitions.—As used in this part:

(1) “Community association” means a residential homeowners’ association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

(2) “Community association management” means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 ~~50~~ units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

(3) “Community association management firm” means a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services described in subsection (2).

~~(4)~~(3) “Community association manager” means a natural person who is licensed pursuant to this part to perform community association management services.

~~(5)~~(4) “Council” means the Regulatory Council of Community Association Managers.

~~(6)~~(5) “Department” means the Department of Business and Professional Regulation.

Section 2. Section 468.4315, Florida Statutes, is amended to read:

468.4315 Regulatory Council of Community Association Managers.—

(1) The Regulatory Council of Community Association Managers is created within the department and shall consist of seven members appointed by the Governor and confirmed by the Senate.

(a) Five members of the council shall be licensed community association managers, one of whom ~~may~~ shall be a community association manager employed by a timeshare managing entity as described in ss. 468.438 and 721.13, who have held an active license for at least 5 years. The remaining two council members shall be residents of this state, ~~and~~ must not be or ever

have been connected with the business of community association management, and shall not be prohibited from serving because the member is or has been a resident or board member of a community association.

(b) The Governor shall appoint members for terms of 4 years. Such members shall serve until their successors are appointed. Members' service on the council shall begin upon appointment and shall continue until their successors are appointed.

(2) The council may adopt rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the department in carrying out the duties and authorities conferred upon the department by this part.

(3) To the extent the council is authorized to exercise functions otherwise exercised by a board pursuant to chapter 455, the provisions of chapter 455 and s. 20.165 relating to regulatory boards shall apply, including, but not limited to, provisions relating to board rules and the accountability and liability of board members. All proceedings and actions of the council are subject to the provisions of chapter 120. In addition, the provisions of chapter 455 and s. 20.165 shall apply to the department in carrying out the duties and authorities conferred upon the department by this part.

(4) The council may establish a public education program relating to professional community association management.

(5) Members of the council shall serve without compensation but are entitled to receive per diem and travel expenses pursuant to s. 112.061 while carrying out business approved by the council.

(6) The responsibilities of the council shall include, but not be limited to:

(a) Receiving input regarding issues of concern with respect to community association management and recommendations for changes in applicable laws.

(b) Reviewing, evaluating, and advising the division concerning revisions and adoption of rules affecting community association management.

(c) Recommending improvements, if needed, in the education programs offered by the division.

Section 3. Section 468.432, Florida Statutes, is amended to read:

468.432 Licensure of community association managers and community association management firms; exceptions.—

(1) A person shall not manage or hold herself or himself out to the public as being able to manage a community association in this state unless she or he is licensed by the department in accordance with the provisions of this part. However, nothing in this part prohibits any person licensed in this state under any other law or court rule from engaging in the profession for which she or he is licensed.

(2) As of January 1, 2009, a community association management firm or other similar organization responsible for the management of more than 10 units or a budget of \$100,000 or greater shall not engage or hold itself out to the public as being able to engage in the business of community association management in this state unless it is licensed by the department as a community association management firm in accordance with the provisions of this part.

(a) A community association management firm or other similar organization desiring to be licensed as a community association management firm shall apply to the department on a form approved by the department together with the application and licensure fees required by s. 468.435(1)(a) and (c). Each community association management firm applying for licensure under this subsection must be actively registered and authorized to do business in this state.

(b) Each applicant shall designate on its application a licensed community association manager who shall be required to respond to all inquiries from and investigations by the department or division.

(c) Each licensed community association management firm shall notify the department within 30 days after any change of information contained in the application upon which licensure is based.

(d) Community association management firm licenses shall expire on September 30 of odd-numbered years and shall be renewed every 2 years. An application for renewal shall be accompanied by the renewal fee as required by s. 468.435(1)(d).

(e) The department shall license each applicant whom the department certifies as meeting the requirements of this subsection.

(f) If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.

(g) Any community association management firm or other similar organization agrees by being licensed that it will employ only licensed persons in the direct provision of community association management services as described in s. 468.431(3).

~~(2) Nothing in this part prohibits a corporation, partnership, trust, association, or other like organization from engaging in the business of community association management without being licensed if it employs licensed natural persons in the direct provision of community association management services. Such corporation, partnership, trust, association, or other organization shall also file with the department a statement on a form approved by the department that it submits itself to the rules of the council and the department and the provisions of this part which the department deems applicable.~~

Section 4. Subsections (2) and (4) of section 468.433, Florida Statutes, are amended to read:

468.433 Licensure by examination.—

(2) The department shall examine each applicant who is at least 18 years of age, who has successfully completed all precicensure education requirements, and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager; ~~and~~

2. The finding by the department of lack of good moral character is supported by clear and convincing evidence; or

3. The applicant is found to have provided management services requiring licensure without the requisite license.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department shall furnish the applicant a statement containing its findings, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(d) The council shall establish by rule the required amount of precicensure education, which shall consist of not more than 24 hours of in-person instruction by a department-approved provider and which shall cover all areas of the examination specified in subsection (3). Such instruction shall be completed within 12 months prior to the date of the examination. Precicensure education providers shall be considered continuing education providers for purposes of establishing provider approval fees. A licensee shall not be required to comply with the continuing education requirements of s. 468.4337 prior to the first license renewal. The department shall, by rule, set standards for exceptions to the requirement of in-person instruction in cases of hardship or disability.

(4) The department shall issue a license to practice in this state as a community association manager to any qualified applicant who successfully completes the examination in accordance with this section and pays the appropriate fee.

Section 5. Section 468.436, Florida Statutes, is amended to read:

468.436 Disciplinary proceedings.—

(1) The department shall investigate complaints and allegations of a violation of this part or chapter 455, or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under the Department of Business and Professional Regulation. After a complaint is received, the department shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after

receipt of a complaint, the department shall acknowledge the complaint in writing and notify the complainant whether or not the complaint is within the jurisdiction of the department and whether or not additional information is needed by the department from the complainant. The department shall conduct an investigation and shall, within 90 days after receipt of the original complaint or of a timely request for additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the department from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this part or chapter 455, or a rule of the department has occurred. If an investigation is not completed within the time limits established in this subsection, the department shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the department shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

~~(2)(4)~~ The following acts constitute grounds for which the disciplinary actions in subsection ~~(4)~~ ~~(3)~~ may be taken:

- (a) Violation of any provision of s. 455.227(1).
- (b)1. Violation of any provision of this part.
2. Violation of any lawful order or rule rendered or adopted by the department or the council.
3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.
4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.
5. Committing acts of gross misconduct or gross negligence in connection with the profession.
6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

~~(3)(2)~~ The council shall specify by rule the acts or omissions that constitute a violation of subsection ~~(2)~~ ~~(1)~~.

~~(4)(3)~~ When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection ~~(2)~~ ~~(1)~~, it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.



(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

~~(5)~~(4) The department may ~~shall~~ reissue the license of a disciplined community association manager or firm upon certification by the department that the disciplined person or firm has complied with all of the terms and conditions set forth in the final order.

Section 6. Paragraph (b) of subsection (1) and subsections (12) and (13) of section 718.111, Florida Statutes are amended, and paragraph (d) is added to subsection (1) of that section, to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

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

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

(12) OFFICIAL RECORDS.—

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

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

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

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

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

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

6. A book or books which contain the minutes of all meetings of the association, of the board of administration directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

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

11. Accounting records for the association and separate accounting records for each condominium which the association operates. All accounting records shall be maintained for a period of not less than 7 years. Any person who knowingly or intentionally defaces or destroys accounting records required to be maintained by this chapter, or who knowingly or intentionally fails to create or maintain accounting records required to be maintained by this chapter, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records shall include, but are not limited to:

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

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

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

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained by the association for a period of 1 year.

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

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

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

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

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

(b) The official records of the association shall be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records of the association available to a unit owner either electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request shall create a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request. The failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records

who, directly or indirectly, knowingly denied access to the records for inspection. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter, or knowingly or intentionally fails to create or maintain accounting records that are required by this chapter, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in s. 718.504 and year-end financial information required in this section on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502; and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

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

3. Medical records of unit owners.

4. Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of any person.

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

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

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and shall adopt rules addressing financial reporting requirements for multicondominium associations. The rules shall include, but not be limited to, uniform accounting principles and standards for stating the disclosure of at least a summary of the reserves, including information as to whether such reserves are being funded at a level sufficient to prevent the need for a special assessment and, if not, the amount of assessments necessary to bring the reserves up to the level necessary to avoid a special assessment. The person preparing the financial reports shall be entitled to rely on an inspection report prepared for or provided to the association to meet the fiscal and fiduciary standards of this chapter. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

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

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

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

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building

maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

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

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

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

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 prior to the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval also may be effective for the following fiscal year. With respect to an association to which the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of financial reports for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the declaration is recorded. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done prior to turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

Section 7. Subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

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

(a) Administration.—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which case in a not-for-profit corporation the board shall consist of not fewer than three members. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

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

(b) Quorum; voting requirements; proxies.—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)3., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the

division. No voting interest or consent right allocated to a unit owned by the association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this subparagraph, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

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

5. When any of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board shall at its next regular



board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, place the item on the agenda. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of board meetings shall be posted. If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered for any reason shall specifically state contain a statement that assessments will be considered and the nature, estimated cost, and description of the purposes for any such assessments. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners is inapplicable to meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.

(d) Unit owner meetings.—

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

property. However, such distance requirement does not apply to an association governing a timeshare condominium. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals or exceeds the number of candidates, no election is required. If there is no provision in the bylaws for terms of the members of the board, The terms of all members of the board shall expire upon the election of their successors at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph, such board member whose term has expired shall be automatically reappointed to the board of administration and need not stand for reelection. In a condominium association of more than 10 units, coowners of a unit may not serve as members of the board of directors at the same time. Any unit owner desiring to be a candidate for board membership shall comply with subparagraph 3. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee or assessment as provided in paragraph (n), is not eligible for board membership. A person who has been convicted of any felony in this state or by any court of record in a the 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, and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for board membership unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a member of the board is ineligible for board membership due to having been convicted of a felony.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice, which notice must include an agenda, shall be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of unit owner meetings shall be posted; however, if there is no condominium property or association property upon which notices can be posted, this requirement does not apply. In lieu of or in addition to the physical posting of notice of any meeting of the unit owners on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise

required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice shall be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes shall be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association shall provide notice, for meetings and all other purposes, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the unit shall so advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered, in accordance with this provision.

3. The members of the board shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. Not less than 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, whether by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election along with a certification form provided by the division attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of this chapter and any applicable rules. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice to the association not less than 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 2., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8½ inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, along with the signed certification form provided for in this subparagraph, to be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a

valid election of members of the board. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid, provided any unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. The regular election shall occur on the date of the annual meeting. The provisions of this subparagraph shall not apply to timeshare condominium associations. Notwithstanding the provisions of this subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

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

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

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

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

8. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 3. unless the association governs 10 units or less and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)3., an association of 10 or fewer units may, by the affirmative vote of a majority of the total voting interests,

provide for different voting and election procedures in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) Budget meeting.—

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

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

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

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

(f) Annual budget.—

1. The proposed annual budget of estimated revenues and ~~common~~ expenses shall be detailed and shall show the amounts budgeted by accounts

and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached thereto shall show amounts budgeted therefor. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

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

4. The only voting interests which are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing re-

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

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

(h) Amendment of bylaws.—

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

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

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

(i) Transfer fees.—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge

shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

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

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

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

3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to



the board any and all records of the association in their possession within 5 full business days of the effective date of the recall.

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

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

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

(l) Certificate of compliance.—There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail, hand deliver, or electronically transmit to each unit owner written notice at least 14 days

prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

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

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

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

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

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

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

Section 8. Section 718.1124, Florida Statutes, is amended to read:

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

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit

owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

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

...(name and address of petitioning unit owner)...

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

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

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

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

Section 9. Paragraph (a) of subsection (2) and subsection (5) of section 718.113, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

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

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to

real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions. This paragraph is intended to clarify existing law and applies to associations existing on October 1, 2008.

(5) Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board shall comply with the applicable building code. ~~Notwithstanding any provision to the contrary in the condominium documents, if approval is required by the documents, a board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board.~~

(a) The board may, subject to the provisions of s. 718.3026, and the approval of a majority of voting interests of the condominium, install hurricane shutters or hurricane protection that complies with or exceeds the applicable building code, or both, except that a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters or other forms of hurricane protection are the responsibility of the association pursuant to the declaration of condominium and may maintain, repair, or replace such approved hurricane shutters, whether on or within common elements, limited common elements, units, or association property. However, where hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters or other hurricane protection.

(b) The association shall be responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this subsection if such hurricane shutters or other hurricane protection are the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters or other hurricane protection authorized by this subsection are the responsibility of the unit owners pursuant to the declaration of condominium, the responsibility for the maintenance, repair, and replacement of such items shall be the responsibility of the unit owner.

(c) The board may operate shutters installed pursuant to this subsection without permission of the unit owners only where such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the common elements or association property within the meaning of this section.

(d) Notwithstanding any provision to the contrary in the condominium documents, if approval is required by the documents, a board shall not

refuse to approve the installation or replacement of hurricane shutters by a unit owner conforming to the specifications adopted by the board.

(6) As to any condominium building greater than three stories in height, at least every 5 years, and within 5 years if not available for inspection on October 1, 2008, the board shall have the condominium building inspected to provide a report under seal of an architect or engineer authorized to practice in this state attesting to required maintenance, useful life, and replacement costs of the common elements. However, if approved by a majority of the voting interests present at a properly called meeting of the association, an association may waive this requirement. Such meeting and approval must occur prior to the end of the 5-year period and is effective only for that 5-year period.

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

Section 10. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the board pursuant to s. 718.113(5) shall constitute a common expense as defined herein and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection pursuant to the declaration of condominium. However, if the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection is the responsibility of the unit owners pursuant to the declaration of condominium, the cost of the installation of the hurricane shutters or other hurricane protection shall not be a common expense, but shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters or other hurricane protection appurtenant to the unit. Notwithstanding the provisions of s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners maintain, repair, or replace hurricane shutters or other hurricane protection a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(5) other hurricane protection or laminated glass architecturally designed to function as hurricane protection, which hurricane shutters or other hurricane protection or laminated glass comply complies with the current applicable building code shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner shall remain responsible for the pro rata share of expenses for hurricane shutters or other hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5), and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters or other hurricane protection.

Section 11. Paragraph (a) of subsection (7) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(7) NATURAL DISASTERS.—

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

Section 12. Subsection (4) is added to section 718.121, Florida Statutes, to read:

718.121 Liens.—

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last known address as reflected in the records of the association. However, if the address reflected in the records is outside the United States, then the notice must be sent by first-class United States mail to the unit and to the last known address by regular mail with international postage, which shall be deemed sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. Alternatively, notice shall be complete if served on the unit owner in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

Section 13. Section 718.1224, Florida Statutes, is created to read:

718.1224 Prohibition against SLAPP suits.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or “SLAPP suits,” as they are typically referred to, have occurred when association members are sued by individuals, business entities, or governmental entities arising out of a condominium unit owner’s appearance and presentation before a governmental entity on matters related to the condominium associ-

ation. However, it is the public policy of this state that governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, and ensure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

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

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

Section 14. Paragraph (b) of subsection (3) of section 718.1255, Florida Statutes, is amended to read:

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

(3) LEGISLATIVE FINDINGS.—

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

Section 15. Section 718.1265, Florida Statutes, is created to read:

718.1265 Association emergency powers.—

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

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

(b) Cancel and reschedule any association meeting.

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

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

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

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

(g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit



owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

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

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

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

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

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

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

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

Section 16. Section 718.127, Florida Statutes, is created to read:

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

Section 17. Subsection (1) of section 718.301, Florida Statutes, is amended, and paragraph (p) is added to subsection (4) of that section, to read:

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

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

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

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

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

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

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

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment; or

~~(g)~~(e) Seven years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer

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

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

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

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

Section 18. Paragraph (f) is added to subsection (1) of section 718.3025, Florida Statutes, to read:

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

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

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

Section 19. Section 718.3026, Florida Statutes, is amended to read:

718.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with 10 or fewer ~~with less than 100~~ units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

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

~~(2)(a)1.~~ Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to the provisions of this section.

~~2.—A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. A condominium whose declaration or bylaws provides for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.~~

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

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

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

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

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

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

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

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

Section 20. Subsection (3) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners; waiver; levy of fine against unit by association.—

(3) If the declaration or bylaws so provide, the association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. No fine will become a lien against a unit. No fine may exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree with the fine, the fine may not be levied. The provisions of this subsection do not apply to unoccupied units.

Section 21. Section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, ~~Powers~~ and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the “division” in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with the provisions of this chapter with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division shall only have jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12). ~~the following powers and duties:~~

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, developer-designated officer, or developer-designated member of the board

of administration, ~~or developer-designated its assignees or agents, community association manager, or community association management firm~~ to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. If a developer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division shall bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that

minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

5. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

(e) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer during the period where the developer controls the association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules promulgated pursuant thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.



(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division shall have the authority to review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in either county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(m) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division

shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(2)(a) ~~Effective January 1, 1992,~~ Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as provided by law.

Section 22. Subsection (9) of section 718.5012, Florida Statutes, is renumbered as subsection (10), and a new subsection (9) is added to that section to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(9) To assist with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.

Section 23. Section 718.50151, Florida Statutes, is amended to read:

718.50151 Community Association Living Study Advisory Council; membership functions.—

(1) There is created the Community Association Living Study Advisory Council ~~on Condominiums~~. The council shall consist of seven appointed members. Two members shall be appointed by the President of the Senate, two members shall be appointed by the Speaker of the House of Representatives, and three members shall be appointed by the Governor. ~~At least One member that is appointed by the Governor may shall represent timeshare condominiums. The council shall be created as of October 1 every 5 years, commencing October 1, 2008, and shall exist for a 6-month term. Members shall be appointed to 2-year terms; however, one of the persons initially appointed by the Governor, by the President of the Senate, and by the Speaker of the House of Representatives shall be appointed to a 1-year term.~~ The director of the division shall appoint ~~serve as~~ an ex officio nonvoting member. The Legislature intends that the persons appointed represent a cross-section of persons interested in community association condominium issues. The council shall be located within the division for administrative purposes. Members of the council shall serve without compensation but are entitled to receive per diem and travel expenses pursuant to s. 112.061 while on official business.

(2) The functions of the ~~advisory~~ council shall be to:

(a) Receive, from the public, input regarding issues of concern with respect to community association living, including living in condominiums, cooperatives, and homeowners' associations. ~~The council shall make and recommendations for changes in the condominium law related to community association living.~~ The issues that the council shall consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.

(b) Review, evaluate, and advise the division concerning revisions and adoption of rules affecting condominiums and cooperatives.

(c) Recommend improvements, if needed, in the education programs offered by the division.

(d) Review, evaluate, and advise the Legislature concerning revisions and improvements to the laws relating to condominiums, cooperatives, and homeowners' associations.

(3) The council may elect a chair and vice chair and such other officers as it may deem advisable. The council shall meet at the call of its chair, at the request of a majority of its membership, at the request of the division, or at such times as it may prescribe. A majority of the members of the council shall constitute a quorum. Council action may be taken by vote of a majority of the voting members who are present at a meeting where there is a quorum.

Section 24. Paragraph (a) of subsection (2) of section 718.503, Florida Statutes, is amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by s. 718.111, and the document entitled "Frequently Asked Questions and Answers" required by s. 718.504. On and after January 1, 2009, the prospective purchaser shall also be entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.
4. The responsibility of the board and of owners with respect to maintenance of the condominium property.
5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.
6. Owners' rights to inspect and copy association records and the limitations on such rights.
7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and authority.
8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.
9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.
10. The voting rights of owners.
11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicuous type: "This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association's board of administration prevail over the contents of this publication."

Section 25. This act shall take effect October 1, 2008.

Approved by the Governor May 1, 2008.

Filed in Office Secretary of State May 1, 2008.