



RUGGIERI  
LAW FIRM



# BOARD MEMBER CERTIFICATION HOA's





# ZOOM PLATFORM BASICS

ALL ATTENDEES ARE “MUTED”. USE THE “CHAT”, “ASK A QUESTION”, OR “RAISE HAND” FUNCTION TO SUBMIT A QUESTION. TIME IS LIMITED (2 HOURS) SO I WILL DO MY BEST TO ANSWER AS MANY QUESTIONS AS POSSIBLE.

ATTENDANCE IS VERIFIED THROUGH A REPORT ISSUED BY ZOOM WHICH TELLS ME WHETHER YOU WERE “TUNED IN”.

THE ATTENDANCE LIST WILL BE USED TO GENERATE CERTIFICATES. GIVE US SOME TIME TO GENERATE THOSE AND E-MAIL THE CERTIFICATES AND COURSE MATERIALS TO ALL VERIFIED ATTENDEES.

CALL 407-395-4766 OR E-MAIL [marisolperez@ruggierilawfirm.com](mailto:marisolperez@ruggierilawfirm.com) WITH ANY QUESTIONS OR FIRM INFORMATION AFTER THE CLASS.

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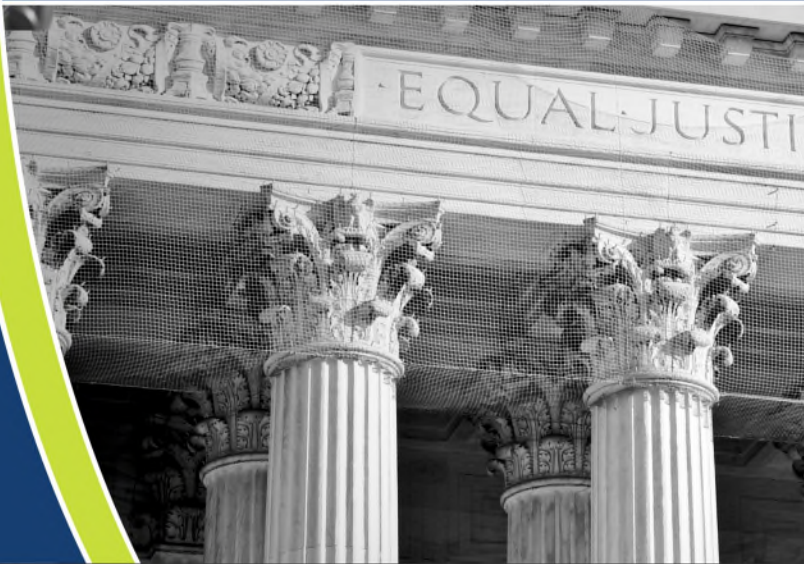




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# Role of the Board





# Role of the Board

## Fiduciary Responsibility

- **Florida State Statutes Chapter 720**
- **Governing Documents**
  - » Declaration
  - » Articles of Incorporation
  - » Bylaws
  - » Rules and Regulations



# Role of the Board

## 720.303(1)

### Board Powers:

- The Board has the power to contract, sue or be sued on behalf of the Association.
- After transition of Developer control, the Board has the authority to represent all owners on matters of common interest including common areas, disputes with the Developer, or challenging property taxes.



# Role of the Board

## 720.301(1)

### Board Powers:

(1) **POWERS AND DUTIES.**—An association which operates a community as defined in s. [720.301](#), must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions.



# Role of the Board

## 720.301(1)

### Board Powers:

Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.



# Role of the Board

## 720.316 - EMERGENCY POWERS

### 720.316:

- Now includes “pandemics” and other emergencies not involving weather events and natural disasters.
- Allows planning based upon advice of public health officials.
- Allows meetings to be conducted by video/phone conference.
- Provides exceptions to typical notice requirements and allows emergency special assessments and borrowing.





# Role of the Board

## Prohibited Board Actions:

- Board members are prohibited from accepting any benefit from a vendor or proposed vendor of the Association. However, this prohibition does not prohibit Board members from accepting gifts at trade shows that do not exceed \$25. 720.3033(3) **\*\*Now subject to monetary damages under s. 617.0834.**
- Board members can be financially liable for their actions if their actions violate criminal law, their action is taken to gain a personal financial benefit, or the Board member acts in bad faith, or with malice or wanton and willful disregard for human rights, safety or property.



# Role of the Board

## Prohibited Board Actions:

***\*\*A director or an officer charged by information or indictment with forging ballot envelope or voting certificate, theft or embezzlement of Association funds, destruction or refusal of access to official records in furtherance of a crime, or obstruction of justice, must be removed from office.***



# Role of the Board

## Prohibited Board Actions:

***\*\*Must disclose any activity that may be reasonably construed to be a conflict of interest at least 14 days before voting on an issue or entering into a contract that is the subject of the conflict. Contracts with Association including relatives, or interest held by director/officer or relative in a corporation that has a contract with the Association are conflicts.***



# Role of the Board

## **\*\*Prohibited Board Actions/Contracts With Directors:**

HOA'S

§720.3065

Fraudulent Voting Activities

Creates a new subsection of the statute which identifies and creates penalties for fraudulent voting activities and provides that such activities constitute a 1<sup>st</sup> degree misdemeanor. These include but are not limited to providing false oaths or affirmations, fraud in connection with the vote, fraudulent alteration of ballots, and menacing or threatening conduct intended to influence deceive or deter a member from voting.



## Florida's Business Judgment Rule

HOLLYWOOD TOWERS CONDOMINIUM ASSOCIATION, INC., a  
Florida corporation

not-for-profit, Appellant,

v.

Sharon HAMPTON, Appellee.

No. 4D09-383. June 23, 2010. Rehearing Denied Aug. 24, 2010.

- **Condominium association brought action against condominium unit owner seeking a permanent injunction requiring owner to allow access to her unit for the purpose of repairing concrete balcony that was a common element of the condominium.**





# Role of the Board

## Florida's Business Judgment Rule cont.

“Where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise.

We adopt the test set forth in *Lamden*, and hold that courts must give deference to a condominium association's decision if that decision is within the scope of the association's authority and is reasonable—that is, not arbitrary, capricious, or in bad faith.”



# Role of the Board

## Breach of Fiduciary Duty

District Court of Appeal of Florida,  
Fifth District.

SONNY BOY, L.L.C., Appellant,

v.

Bhagwan ASNANI, et al, Appellees.

No. 5D03-59. May 28, 2004. Rehearing Denied Aug. 5, 2004.

“[\[2\]](#) It is well established in Florida that absent fraud, self-dealing and betrayal of trust, directors of condominium associations are not personally liable for the decisions they make in their capacity as directors of condominium associations. *See, e.g., [Perlow v. Goldberg, 700 So.2d 148 \(Fla. 3d DCA 1997\)](#)* (finding directors of condominium associations not individually liable for actions and governance of condominium association);



## Breach of Fiduciary Duty continued...

*Taylor v. Wellington Station Condominium Association, Inc.*, 633 So.2d 43 (Fla. 5th DCA 1994) (finding that in general, corporate directors and officers cannot be personally liable for corporate acts absent actual wrongdoing in the form of fraud, self-dealing or unjust enrichment to trigger individual liability); *Munder v. Circle One Condominium, Inc.*, 596 So.2d 144 (Fla. 4th DCA 1992) (reversing lower court's finding of individual liability by condominium developer). Similarly, **\*28**section 617.0834(1), Florida Statutes (2002)<sup>FN1</sup> and section 607.0831(1), Florida Statutes (2002)<sup>FN2</sup> provide insulation for condominium association directors from liability in their individual capacities absent fraud, criminal activity, self-dealing, or unjust enrichment.”



# Role of the Board

## Eligibility to Serve

- A Member delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. (720.306(9))

-A homeowner who has been charged with felony theft from the Association or embezzlement is suspended from the Board unless and until they are found not guilty.

-A homeowner who has been convicted of a felony in Florida or has been convicted of a crime in another jurisdiction that, if committed in Florida, would constitute a felony, is not eligible to serve on the Board unless their rights have been restored for a period of at least 5 years. (720.306(9))



# Board Meeting Basics

## NOTICE-HOA'S

-Notices of all board meetings **\*\*must specifically identify agenda items for the meetings §720.303(2)(C)** and must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency.

-Broadcast on closed circuit TV can be used in lieu of physical posting subject to additional requirements.





# Board Meeting Basics

## NOTICE-HOA'S

-An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which **special assessments** will be considered or at which amendments to **rules regarding parcel use** will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

-The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

## NOTICE-HOA'S

-Notice requirements also apply to meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

## NOTICE-HOA'S

720.306 - The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following: The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members 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 upon execution among the official records of the association.

\*\*§ 720.306(1)(g), Florida Statutes – this change removes the requirement that homeowners' associations send meeting notices using the parcel owner's mailing address on the property appraiser's website. The last address provided by the homeowner and on file with the Association should be used.

# Board Meeting Basics

## What is a “Meeting”?

-A meeting of the board of directors of an association occurs whenever a quorum of the board **gathers to conduct association business**. §720.303(2)(a)

-A board or committee member’s participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present. A speaker must be used so that the conversation of such members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting. §718.112(2)(b)5.

# Board Meeting Basics

## Voting

-Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. §720.303(2)(c)3.



## Voting

### 720.303(2)(a) – VOTING BY E-MAIL

Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.



# Board Meeting Basics

## 720.303(2)(e) – MANDATORY DISCUSSION OF PRESERVING THE COVENANTS

(e) At the first board meeting, *excluding the organizational meeting, which follows the annual meeting of the members*, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. [720.3032](#).

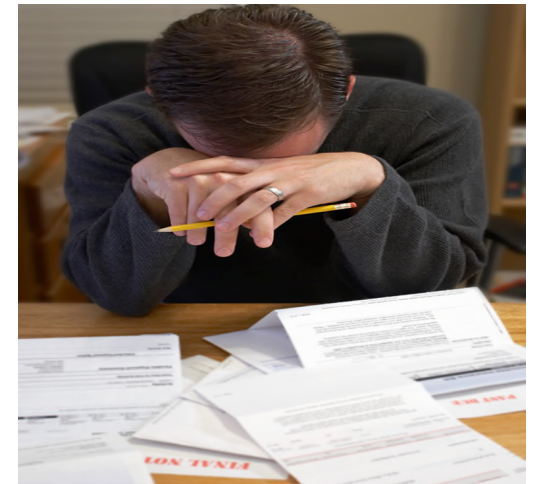
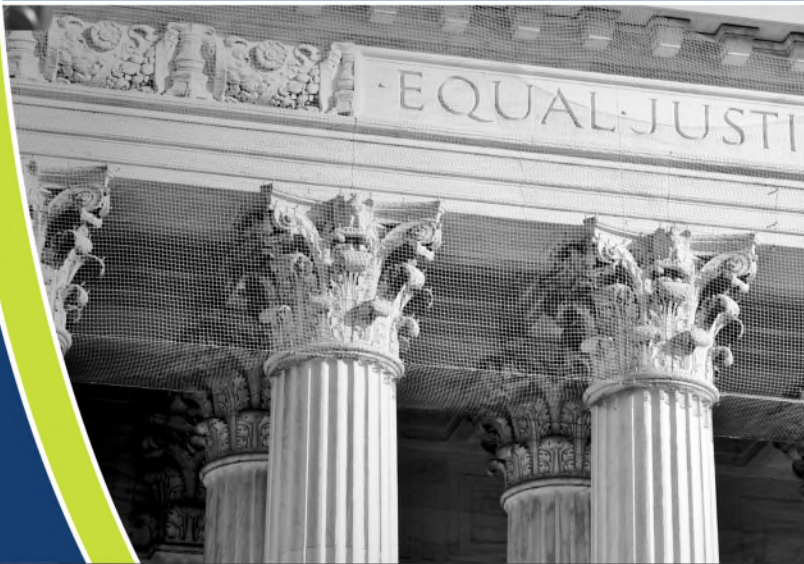




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# Budgets



# Budgets

## 720.303(6)(a)

- **Annual budget:**
  - annual operating expenses.
  - estimated revenues and expenses for that year
  - estimated surplus or deficit as of the end of the current year.
  - The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.



# Budgets

## 720.303(6)(a)

- The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits for inspection of the official records. (720.303(6)(a))

# Budgets - HOA's

- **Special Assessment: 14-day notice of a Board meeting at which a special assessment will be considered is required for Homeowners Associations. (720.303(2)(c)2.)**
- “An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.”

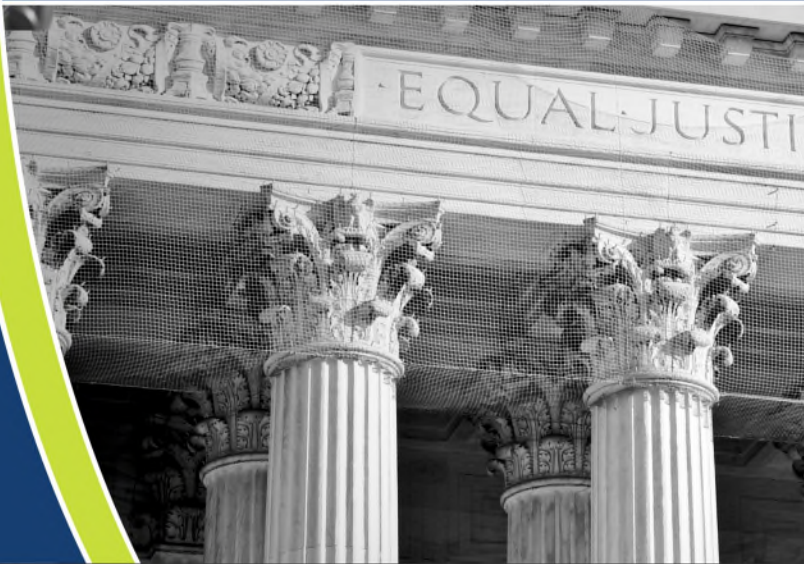




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# Reserves







# HOA Reserves

## 720.303(6)

### Homeowner Association Reserves

- **Not required by Florida Statutes.**
- **\*\*Homeowner Association reserves are ONLY required when established by the affirmative approval of a majority of the total voting interests of the association. (720.303(6)).**
- **Developer-created reserves are no longer mandatory after transition and does not create mandatory reserves.**
- **Developer-created reserves are not considered “operating expenses” for purposes of deficit funding.**



# HOA Reserves

## 720.303(6)

- Reserves shall be determined, maintained, and waived upon approval of a majority of the total voting interests of the association. Reserve accounts may be terminated upon approval of a majority of the total voting interests. Upon such approval, the terminating reserve account shall be removed from the budget. (720.303(6)(b))



# HOA Reserves

## 720.303(6)

- If the Association's budget does not include reserve accounts for items of deferred maintenance and replacement cost for which the Association is responsible and which may result in a special assessment, the budget must include a statutory disclosure that reserve accounts are not being maintained. (720.303(6)(c))

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION [720.303\(6\)](#), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.



# HOA Reserves

## 720.303(6)

- If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION [720.303\(6\)](#), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

# Reserves - Funding Formula

(g) Funding formulas for reserves authorized by this section must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.<sup>1</sup> If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is the sum of the following two calculations:

- a. The total amount necessary, if any, to bring a negative component balance to zero.
- b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds.



# Reserves - Pooled vs. Straight Line Accounting

1. The total estimated useful life of the asset;
2. The estimated remaining useful life of the asset;
3. The estimated replacement cost or deferred maintenance expense of the asset;
4. The estimated fund balance as of the beginning of the period for which the budget will be in effect;

## POOLED RESERVE DISCLOSURE IN BUDGET MUST SET FORTH:

1. The total estimated useful life of each asset within the pooled analysis;
2. The estimated remaining useful life of each asset within the pooled analysis;
3. The estimated replacement cost or deferred maintenance expense of each asset within the pooled analysis; and
4. The estimated fund balance of the pooled reserve account as of the beginning of the period for which the budget will be in effect.



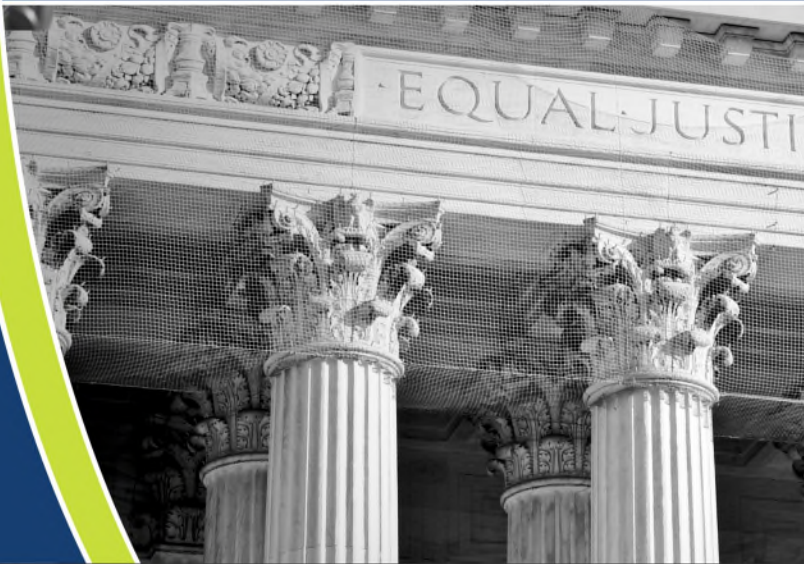




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# Financial Reporting







# Financial Reporting-HOA 720.303(7)

- Within 90 days of the end of the fiscal year, the association shall prepare and complete a financial report for the preceding fiscal year.
- The report must be provided within 21 days of receipt but no longer than 120 days beyond the end of the fiscal year (or such other date set forth in the Bylaws).



# Financial Reporting-HOA

## 720.303(7)

An association with total annual revenues of:

- \$150,000, but less than \$300,000, shall prepare **compiled** financial statements.
- \$300,000 but less than \$500,000, shall prepare **reviewed** financial statements.
- \$500,000 or more shall prepare **audited** financial statements.
- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.



# Financial Reporting-HOA

## 720.303(7)

Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

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



# Financial Reporting-HOA

## 720.303(7)

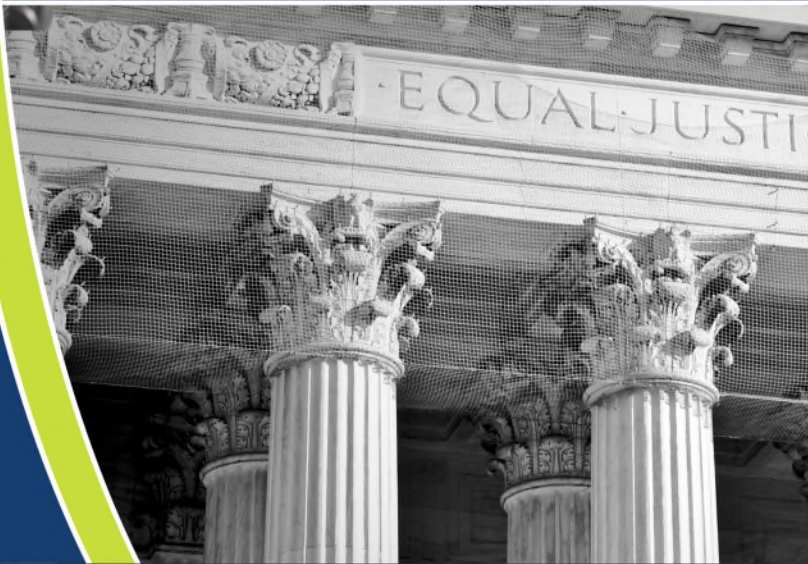
- If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:
1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
  2. A report of cash receipts 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.



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# Elections





# HOA Elections

## 720.306(9)

- Election of directors must be conducted in accordance with the procedures set forth in the governing documents of the association.
- All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting.
- An election is not required unless more candidates are nominated than vacancies exist.





# HOA Elections

## 720.306(9)

- Any challenge to the election process must be commenced within 60 days after the election results are announced.
- A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the last date they can nominate themselves is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.





# HOA Elections

## 720.306(9)

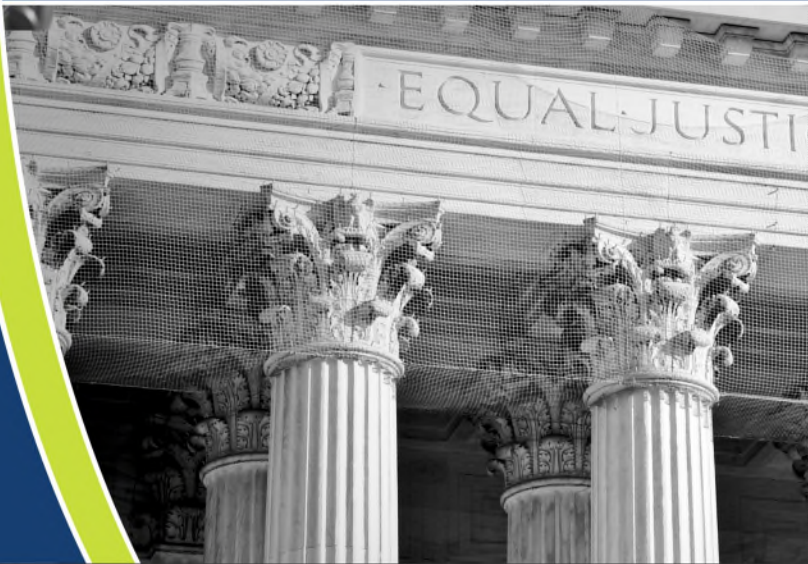
- Any election dispute between a member and an association may be submitted arbitration with the division OR a court of competent jurisdiction. Election and recall disputes are NOT subject to presuit mediation.
- Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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 the governing documents.
- Unless otherwise provided in the bylaws, a board member appointed or elected due to a vacancy is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by F.S. 720.303(10) and rules adopted by the division.



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# Records Maintenance and Access





# Records Maintenance and Access 720.303(4)

**Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.**

**(b) A copy of the bylaws of the association and of each amendment to the bylaws.**

**(c) A copy of the articles of incorporation of the association and of each amendment thereto.**

**(d) A copy of the declaration of covenants and a copy of each amendment thereto.**

**(e) A copy of the current rules of the homeowners' association.**

**(f) The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.**



# Records Maintenance and Access

## 720.303(4)

(g) A current roster of all members and their **\*\* designated** mailing addresses and parcel identifications. *A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.* The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. *A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices.* 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.





# Records Maintenance and Access

## 720.303(4)

- h) All of the association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.**
- (i) A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of 1 year.**
- (j) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:**

  - 1. Accurate, itemized, and detailed records of all receipts and expenditures.**
  - 2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.**
  - 3. All tax returns, financial statements, and financial reports of the association.**
  - 4. Any other records that identify, measure, record, or communicate financial information.**
- (k) A copy of the disclosure summary described in s. [720.401\(1\)](#).**
- (l) All other written records of the association not specifically included in the foregoing which are related to the operation of the association.**



# Records Maintenance and Access 720.303(4)

**\*\*ELECTION RECORDS MUST  
NOW BE KEPT FOR AT LEAST  
ONE (1) YEAR\*\***



# Records Maintenance and Access

## 720.303(4)

The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.





# Records Maintenance and Access 720.303(4)

- The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.



# Records Maintenance and Access 720.303(4)

- (b) A member 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 subsection. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.



# Records Maintenance and Access

## 720.303(4)

- (c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopier available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members.



# Records Maintenance and Access 720.303(4)

Notwithstanding this paragraph, the following records are not accessible to members or parcel 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, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.



# Records Maintenance and Access

## 720.303(4)

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.
3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term “personnel records” does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.
4. Medical records of parcel owners or community residents.
5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person’s name, parcel designation, mailing address, and property address.
6. **Any electronic security measure that is used by the association to safeguard data, including passwords.**
7. **The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.**



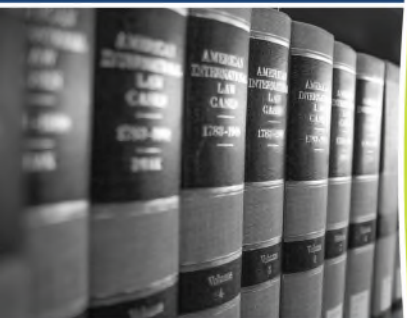
# Records Maintenance and Access Affirmative Acknowledgments

Note the new requirement that the Association maintain “affirmative acknowledgments” of e-notice of assessments as part of the official records, *but they are not accessible to other Members.*

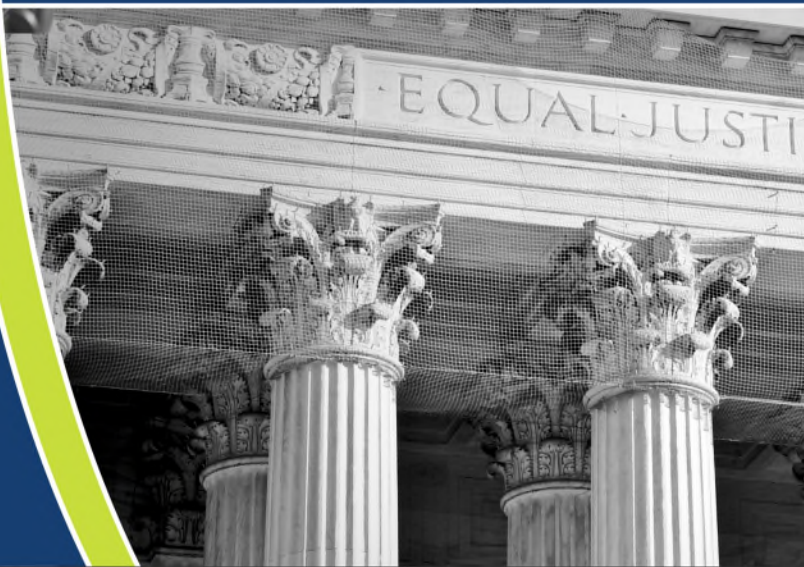




RUGGIERI  
LAW FIRM



# Dispute Resolution





# Dispute Resolution

## HOA's: 720.311

### 720.305:

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation.



# Dispute Resolution

## HOA's: 720.311

- Election and recall disputes MAY EITHER be filed for arbitration before the DBPR or in a court of “competent jurisdiction” (state court). THEY ARE NOT SUBJECT TO PRESUIT MEDIATION.
- Covenant violation, document, meeting and access to records disputes are subject to pre-suit mediation and if unresolved, court. Disputes subject to pre-suit mediation do not include the collection of any assessment, fine, or other financial obligation, including attorney’s fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties.
- The aggrieved party must provide the other party with a demand for pre-suit mediation in a form which substantially complies with the form provided in the statute.
- Failure to participate in pre-suit mediation results in waiver of the right to recover prevailing party attorney’s fees and costs.



# Fines and Suspensions

## 720.305

**(2) The association may levy reasonable fines *\*\*for violations of the declaration, association bylaws, or reasonable rules of the association.* A fine may not exceed \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.**

**(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.**



# Fines and Suspensions

## 720.305

- A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person sought to be fined or suspended **\*\*at his or her designated mailing or e-mail address in the association's official records** or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.
- **\*\*The notice must include a description of the alleged violation, the specific action required to cure such violation, if applicable, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.**



# Fines and Suspensions

## 720.305

- If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the board of administration imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.





# Fines and Suspensions

## 720.305

***\*\*After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable***



# Fines and Suspensions

## 720.305

- If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.



# Fines and Suspensions

## 720.305

- An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.



# Fines and Suspensions

## 720.305

- (5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.
- (6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by a member.



# LEGISLATIVE UPDATE 2024 (JULY 1, 2024)

\*\*Note that this is not an exhaustive Legislative Update and is merely intended to provide highlights of the most critical changes. Our Legislative Update Course is being approved by the DBPR and will be made available for online attendance.

720.303(4) incorporates the condominium official records requirements for posting of documents on the Association website for HOA's with 100 or more parcels. Must be posted on an association website no later than January 1, 2025. Requirements regarding notice and posting of information on the website previously adopted in Chapter 718 are added to 720. Also requires adoption of a record access policy.

**Before October 1, 2024**, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association (can mail notice with website url to owners who have not consented to e-notice). An association shall provide a physical or digital copy of the association's rules and covenants to every new member of the association.



# LEGISLATIVE UPDATE 2024 (JULY 1, 2024)

720.3033-a "written certification" by a new board member is no longer sufficient for the statutory educational requirements which must now include completion of a board member certification class by a state approved education provider. Must be provided within 90 days of being elected and remains valid for 4 years. Must be "renewed" every 4 years. Directors in communities of 2500 or fewer parcels must complete 4 hours of continuing education annually. Those in communities in excess of 2500 parcels must complete 8 hours of continuing education annually.

720.3035-Association must "reasonably and equitably" apply and enforce guidelines for architectural modifications and cannot enforce or adopt rules that limit modifications which are not visible from the parcel's frontage or adjacent parcels or common areas. Association must refer with specificity to the rule or covenant the Association is relying upon in denying an application (aesthetic discretion?)





# LEGISLATIVE UPDATE 2024 (JULY 1, 2024)

720.305-creates minor additional requirements for fining including a requirement that the hearing be conducted within 90 days after issuance of the notice, requires notice of the outcome of the hearing within seven days, and prohibits imposition of a fine for a violation that is cured before the hearing takes place. Prohibits fining for garbage receptacles and holiday decorations.

720. 3075-on street parking prohibitions may not prohibit an owner from parking in any area governed by state, county and municipal regulations. Only “commercial vehicles as defined by F.S. 320.01(25)” may be prohibited. Prohibitions against use of contractors not on a “preferred list” are invalid and unenforceable, and the Association may not require the use of licensed contractors (insured appears to be an acceptable requirement).



*“Devoted to the Personalized Representation  
Of Community Associations”*

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