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Homeowners' Association Board Member Certification Course

CAM CE Course Number: 9631092

Thursday | October 17th | 11:30 am – 1:30 pm



Cobb & Gonzalez, P.A.
Community Association Webinar Series



Roadmap

HOA Operations & the Association Budget

Reserve Funding

Elections

Financial Reporting, Literacy & Transparency

Association Governance (Notice & Meeting Requirements)

Official Records Maintenance & Recordkeeping

Dispute Resolution

Levying of Fines & Suspension of Use Rights

HOA Operations



Sources of Authority

Governing Documents:

- Declaration of Covenants
- Articles of Incorporation
- Bylaws
- Rules and Regulations
- Architectural Standards

Legal Authority:

- Chapter 720, Fla. Statutes
- Chapter 617, Fla. Statutes (non-profit corporations)
- Florida Administrative Code
- Florida Court Case Law
- DBPR Arbitration Opinions

Board Member Responsibilities And Obligations

- Establish a Budget
 - Maintain the Common Elements
 - Collect Assessments
 - Enforce Rules, Regulations and Community Documents
 - Make Business Decisions
-
- Fiduciary Duty/Obligation
 - Duty of Loyalty
 - Duty of Ordinary and Reasonable Care
 - Business Judgment Rule

HOA Operations



Board Member Fiduciary Duties

- Officers and Directors have a fiduciary relationship to the members.
- The HOA, through its board, 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.
- Before commencing litigation involving amounts in controversy over \$100,000, the HOA must obtain the approval of a majority of the voting interests at a meeting of the membership at which a quorum has been obtained.
- HOA funds shall be maintained separately in the HOA's name.
- A director, officer, or committee member may not receive any compensation from the HOA for the performance of duties and may not in any way benefit financially from service to the HOA.
- Reimbursement for out-of-pocket expenses incurred by such person on behalf of the HOA, subject to approval in accordance with the governing documents, is allowed.

Fla. Stat. § 720.303

Association Budget



The proposed annual budget must be detailed by including estimated revenues and expenses. It must also include amounts budgeted by account and expense classifications including, but not limited to, the following:



Assessment revenue



Income from amenities



Maintenance fees



Management fees



Salaries



Insurance premiums



Operating capital needs



Reserves

Association Budget



Budget Meeting

- Notice of the budget meeting must be posted on the HOA property at least 48 hours prior to a meeting at which a proposed annual budget will be considered (via hand delivery, mail, or e-mail).
- The HOA 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.
- An affidavit shall be filed with the official records, evidencing compliance with this requirement.

Fla. Stat. § 720.303(6)

Association Budget



Reserve Funding

- Reserve accounts are not mandated by the HOA Act.
- An HOA has statutory reserve accounts only if (1) reserve accounts were initially established by the developer pursuant to the governing documents; or (2) if the membership of the HOA votes to establish reserves after developer turnover and upon a majority of the total voting interests of the HOA.
- If statutory reserve accounts are not established, the funding of the budget for repairing / maintaining common element items is limited to the extent the governing documents limit increases in assessments.
- If members vote to establish statutory reserves, the vote must specify and designate the individual components for which statutory reserve accounts are to be established (roads, entrance gate, clubhouse, pool, etc.).
- If the HOA provides for statutory reserve accounts, then reserve funding must be included in all future budgets. The amount to be reserved is based upon estimated remaining useful life and estimated replacement cost of each item.

Association Budget



Reserve Funding

- If the HOA's budget does not provide for statutory reserve accounts nor any funding for deferred expenditures and the HOA is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not funded, each annual financial report must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS UNDER 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.

Fla. Stat. § 720.303(6)(c)1.

Association Budget



Reserve Funding

- If the HOA's budget does include funding for deferred expenditures, such as capital improvements and maintenance, but statutory reserve accounts have not been established by the developer or a vote of the membership, each yearly financial report must 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.

Fla. Stat. § 720.303(6)(c)2.

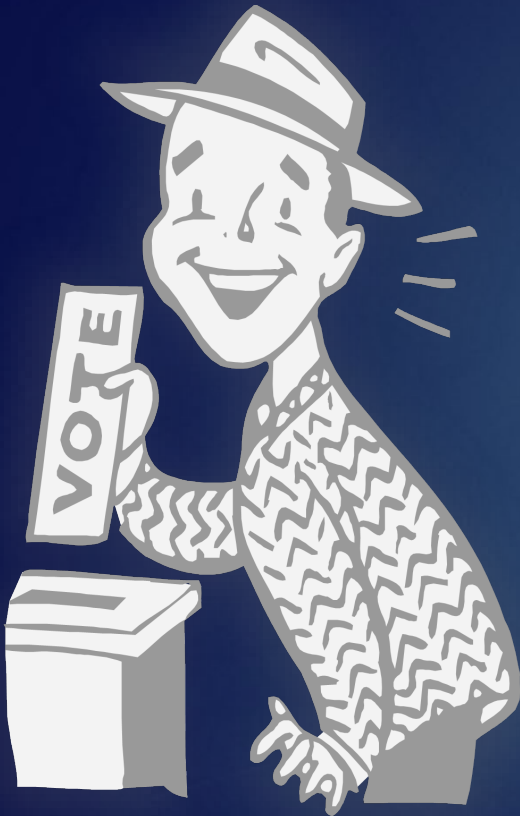
Association Budget



Reserve Funding

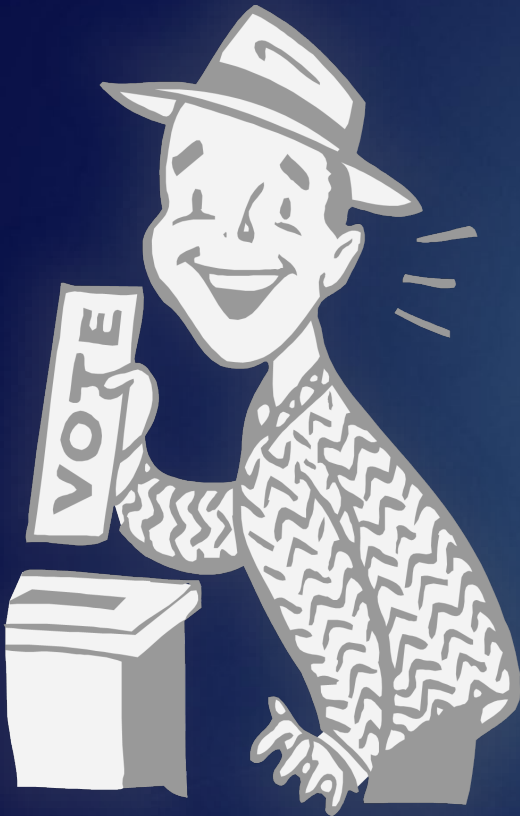
- HOAs can have pooled reserve accounts or component reserve accounts.
- Reserve funding amounts are computed by a formula using estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item.
- This information can be obtained through a reserve study by a licensed reserve study specialist.
- Reserve funds must remain in the statutory reserve accounts and can only be used for authorized reserve expenditures, unless another use is approved in advance by a majority member vote at a member meeting at which a quorum is present.
- The members, upon a majority vote at a meeting at which a quorum is present, may vote for no reserves or less reserves funding than required.

Elections



- Director elections are held at the annual meeting, and a quorum is needed to have an election. The maximum quorum requirement, per law, is 30% of the members (but bylaws can provide a lower quorum amount).
- Elections must be conducted according to the procedures set in the HOA's bylaws. (The HOA election process is not entirely regulated by statute and varies from HOA to HOA based on each HOA's bylaws).
- A member may self-nominate as a candidate at the election meeting, but if an HOA's election process allows nominations in advance of the meeting, an HOA is not required to allow nominations from the floor at the meeting.
- An election is not required unless there are more candidates than vacancies.
- If an election is not required due to equal or fewer candidates than vacancies, and if nominations from the floor are not required pursuant to bylaws, write-in nominations are not permitted and the candidates shall take their seats on the board, regardless of whether a quorum exists at the meeting.

Elections



- If the HOA bylaws permit voting by secret ballot by members who are not in attendance at the meeting, such ballots must be placed in an inner envelope with no identifying markings and delivered to the HOA in an outer envelope bearing identifying information reflecting the name of the member, the address for which the vote is being cast, and the signature of the owner casting that ballot.
- If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots that were personally cast, and opened when the ballots are counted.
- If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified.
- Any vote by ballot received after the closing of the balloting may not be considered.

Elections



Running for the Board

Eligibility requirements:

- All members in good standing can run for election.
- However, a member is ineligible to run for the board if:
 - The person has ever been suspended or removed from the board by the DBPR.
 - The person is delinquent in the payment of any monetary obligation due to the association.
 - The person has been convicted of any felony, unless that person's civil rights have been restored for at least 5 years.
- If a board member becomes more than 90 days delinquent in the payment of any funds due the HOA, he or she is deemed to have abandoned the office by law and is off the board.
- 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 that constitutes less than a quorum.

Amending Bylaws For New Election Procedures

If your HOA's bylaws do not have clear election procedures, or no election procedures at all, consider amending the bylaws to implement a customized version of the election procedures for condominiums as stated in the Condominium Act. Example:

- At least 60 days before the scheduled election, the HOA shall deliver to each member a first notice of the date, time and place of the election, and to also solicit candidates.
- At least 40 days before the scheduled election, any eligible person desiring to be a candidate must provide written notice of his or her intent.
- At least 35 days before the scheduled election, candidates can deliver to the HOA a one-page candidate information sheet about themselves.
- At least 14 days before the scheduled election, the HOA must send a second notice of the meeting and election to all members, with ballots, envelopes, candidate information sheets, proxies, etc.

Board Certification and Continuing Education

Initial Board Certification:

- Within 90 days after being elected or appointed to the board, each director must submit a certificate of completion from a board certification class administered by a department-approved education provider.
- The certificate of completion is valid for 4 years. A director must complete the board certification course at least every 4 years.

Continuing Education:

- A director of an HOA with fewer than 2,500 parcels must complete at least 4 hours of continuing education annually.
- A director of an HOA with 2,500 parcels or more must complete at least 8 hours of continuing education annually.
- A director who does not meet the board certification or continuing education requirements is suspended from the board until he or she complies. The board may temporarily fill the vacancy during the period of suspension.
- The HOA shall retain each director's certificates for 5 years after the director's election.

Online Voting



An Alternative For Association Voting

- An HOA may conduct elections and other membership votes through an Internet-based online voting system for members who consent in writing to online voting.
- To implement online voting the board must first authorize this through a board resolution.
 - The board resolution must provide that members receive notice of the opportunity to vote through an online voting system, must establish procedures and deadlines for members to consent, electronically or in writing, to online voting, and must establish procedures and deadlines for members to opt out of online voting.
 - Written notice of a meeting at which the board resolution for online voting will be considered must have at a 14-day notice sent to the members and posted on the HOA property.
- A member voting online counts toward quorum for the meeting.
- You will end up with a hybrid voting system if 100% of the membership does not consent to online voting.



Annual Financial Reporting Requirements

- Within 90 days after the end of the fiscal year, the HOA 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 HOA or received from the third party financial professional, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the HOA shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.
- Financial reporting requires a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy.



Annual Financial Reporting Requirements

Annual Financial Reporting Requirements are based on an HOA's total annual revenues, as follows:

- Total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures.
- Compiled financial statements are required for HOAs with annual revenues between \$150,000 and \$300,000.
- Reviewed financial statements are required for HOAs with annual revenues of \$300,000 to \$500,000.
- Audited financial statements are required for HOAs with annual revenues of \$500,000 or more.
- HOAs with at least 1,000 parcels must prepare audited financial statements annually, regardless of the HOAs total annual revenues.



Annual Financial Reporting Requirements

- If 20% of the members petition the board for a higher level of financial reporting, the HOA shall notice and hold a meeting of members within 30 days to hold a membership vote on raising the level of reporting for that fiscal year.
- Upon approval of a majority of the membership, the HOA shall prepare, shall amend the budget or adopt a special assessment to pay for the financial report, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:
 - Compiled, reviewed, or audited financial statements, if the HOA is otherwise required to prepare a report of cash receipts and expenditures;
 - Reviewed or audited financial statements, if the HOA is otherwise required to prepare compiled financial statements; or
 - Audited financial statements if the HOA is otherwise required to prepare reviewed financial statements.

Annual Financial Reporting Requirements

- If approved by a majority of the membership voting interests present at a meeting, the HOA may prepare a lower standard of financial reporting:
 - A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
 - A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
 - A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.
- HOAs are prohibited from reducing their required level of financial reporting for consecutive years.

Annual Financial Reporting Requirements

- Reserve and operating funds shall not be commingled except the HOA may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.
- If an HOA collects a deposit from a member for any reason, including to pay for expenses that may be incurred due to construction on a member's parcel, such funds must be maintained separately and may not be commingled with any other HOA funds.
- Upon completion of the member's construction project or other reason for which the deposit was collected, the member may request an accounting from the HOA of the funds that were deposited, and the HOA must provide such accounting to the member within 7 days after receiving the request.
- An HOA must remit payment of any unused funds to the member within 30 days after receiving notice that the member's construction project, or other reason for which the deposit was collected, is complete.

HOA Operations



Quorum and Proxies

Quorum:

- Business conducted at meetings without a quorum render the actions void.
- For member meetings, quorum is 30% of the voting interests unless a lower number is stated in the governing documents. (Suspended voting rights do not count toward the quorum calculations).
- For board meetings, a quorum is majority of board.

Proxies:

- Limited and general proxies may be used to establish a quorum.
- Members can use proxies for any vote unless otherwise provided in the governing documents.
- To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the person who executed the proxy.
- Limitation of proxies: Only effective for the specific meeting for which it was given. For lawfully adjourned meetings, a proxy expires 90 days after the date of the original meeting. Each proxy is revocable at any time by the unit owner executing it.

Board of Director Meetings



Notice Requirements

- Board meetings must be properly noticed and open to all members. The notice must identify all agenda items, be posted on the property at least 48 hours before the meeting, except in an emergency. The board shall designate a location on HOA property for posting notices.
- Members have the right to attend and speak at all meetings as to all agenda items. Members also have the right to video or audio record the meetings. The HOA can enact rules on members speaking and recording.
- 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 sent to the members and posted on the HOA property at least 14 days before the meeting.
- A special assessment may not be levied at a board meeting unless the notice includes a statement that assessments will be considered and the nature of the assessments.
- The requirement that Board meetings be open to all members does not apply to: (1) Meetings between the board or a committee and the HOA's attorney regarding litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or (2) Board meetings held for the purpose of discussing personnel matters.

Board of Director Meetings



Meeting Decorum

- Board members may use e-mail as a means of communication but may not cast a vote on HOA matters via e-mail.
- A meeting of the board of directors occurs whenever a quorum of the board gathers to conduct HOA business.
- The laws on board meetings shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of HOA funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to parcels within the HOA community.
- The HOA may adopt written rules on the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with Florida law and may include a sign-up sheet for members wishing to speak.
- 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, if allowed by the bylaws.

Members' Meetings



Notice Requirements

Members' Meeting Notice:

The bylaws shall provide the required notice to members of all member meetings, and if they do not, the HOA Act provides the following notice requirements:

- The HOA shall give all members notice of all membership meetings, which shall be sent to the members not less than 14 days prior to the meeting.
- Evidence of compliance with the 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.
- The Notice must include an agenda for the meeting.
- Members can provide consent to receive notices by e-mail for the board of director meetings, committee meetings, and member meetings.

Members' Meetings



Meeting Decorum

Annual Meeting:

- The HOA shall hold a meeting of its members annually for the transaction of all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws.
- The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.

Special Meetings:

- Special meetings must be held when called by the board or, unless a different percentage is stated in the governing documents, by at least 10 percent of the total voting interests of the HOA.
- Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

Members' Meetings



Meeting Decorum

- In any meeting where there will be consideration of regular or special assessments, specific disclosure must be provided in the meeting notice, including a description of the purpose of the assessment and estimated costs.
- Members have the right to participate in meetings with reference to all designated agenda items.
- The HOA may adopt rules governing the frequency, duration, and manner of member participation. Example: A member may speak up to 3 minutes maximum on each agenda item; A member cannot speak twice on an agenda item until all other members wanting to speak on the agenda item have done so.

Meeting Minutes



- Minutes of all meetings of the members and of the board of directors of an HOA must be maintained in written form or in another form that can be converted into written form within a reasonable time.
- Meeting minutes are part of the HOA's official records and must be maintained for 7 years.
- A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

HOA Service Contracts



- If a contract for the purchase, lease, or renting of materials or equipment, or for services, requires payment by the HOA that exceeds 10 percent of the total annual budget of the HOA, including reserves, the HOA must obtain competitive bids for the materials, equipment, or services.
- The HOA does not have to accept the lowest bid.
- This does not apply to contracts with employees of the HOA, and contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services.

Official Records



General Requirements

- Official records must be maintained for at least 7 years; Some documents must be maintained in perpetuity.
- Kept within 45 miles of the property or within the county in which the property is located.
- Must be made available within 10 working days after receiving a written request.
- Open to inspection by any member at all reasonable times. This right to inspect includes the right to make copies and a reasonable fee may be charged for copies. A fee cannot be charged simply for the inspection of records.
- The HOA may adopt reasonable rules regarding the frequency, time, location, notice and manner of records inspections and copying.
- The HOA shall adopt written rules governing the method or policy by which the official records of the HOA are to be retained. Such information must be made available to the parcel owners through the HOA's website or application.

Fla. Stat. § 720.303(5)



Member Inspection and Copying

- The HOA may comply with a request by having a copy of the official records available for inspection or copying in the community or by making the records available to an 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 HOA has a photocopy machine available where the records are maintained, it must provide owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.
- An HOA shall allow a member or his or her 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 HOA providing copies.
- The HOA may not charge a fee to a member for the use of a portable device.

Partial Statutory List of Records

The following is a partial list of items designated as official records:

- A copy of the plans, permits, warranties, and other items provided by the developer;
- A copy of the recorded declaration, bylaws; articles of incorporation, rules and regulations, architectural standards;
- A book containing the minutes of all meetings;
- All current insurance policies of the association;
- A copy of the management agreement, lease or any other contract to which the association is a party;
- Bids for materials, equipment, or services;
- Financial and accounting records;
- The catch-all: “All other written records of the association not specifically included in the foregoing which are related to the operation of the association.”
 - A complete list of items designated as official records can be found at Fla. Stat. § 720.303(4)(a).

Online Records Requirements

An HOA with 100 or more parcels shall post certain records on its website or mobile device app. A partial list of these online records include:

- A copy of the recorded declaration, bylaws; articles of incorporation, rules and regulations, architectural standards;
- A list of all contracts (not the contracts themselves but a list);
- The annual budget;
- Insurance policies;
- The financial report and any monthly income and expense statements;
- Board member certifications;
- Member meeting notices and agendas, which must be posted in plain view on the homepage or on a separate page labeled “notices”.
- Any document to be voted on by the members or any document listed on the meeting agenda at least 7 days before the meeting.
- Notice of any board meeting, the agenda, and any other document required for such board meeting.
 - A complete list of items can be found at Fla. Stat. § 720.303(4)(b).

Official Records



Information Not Accessible By Members

The following records are not accessible to members:

- Any record protected by the attorney-client privilege, including a record by an association's attorney that reflects a mental impression, conclusion, litigation strategy, legal theory, etc.;
- Information obtained by an association in connection with the approval of a lease, sale, or other transfer of a unit;
- Personnel records of association or management company employees;
- Medical records of members;
- Electronic security measures used by the association to safeguard data, including passwords;
- The software and operating system used by the association which allow manipulation of data. The data is part of the official records of the association;
- Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, etc.

Fla. Stat. § 720.303(5)

Official Records



General Requirements

- The HOA may not require an owner to state any purpose or reason for the inspection or limit an owner's right to inspect records to less than one 8-hour business day per month.;
- The HOA may impose fees to cover the costs of providing copies of the 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 HOA may charge up to 25 cents per page for copies made on the HOA's photocopier. If the HOA does not have a photocopy machine available where the records are kept, or if the records requested exceed 25 pages in length, the HOA may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice.
- HOAs shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members.

Fla. Stat. § 720.303(5)



Penalties for Non- Compliance

- The failure 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 HOA willfully failed to comply.
- A member denied access to records is entitled to the actual damages or minimum damages for the willful failure to comply. The minimum damages are \$50 per calendar day up to 10 days.
- Any member or manager who knowingly, willfully, and repeatedly refuses to make records available with the intent of causing harm to the HOA or its members, commits a misdemeanor of the second degree. “Repeatedly” means two or more violations within a 12-month period
- Any person who knowingly and intentionally destroys accounting records, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the HOA or its members, commits a first-degree misdemeanor.

Dispute Resolution



The HOA Act requires certain disputes to be subject to arbitration, state court litigation, and/or mediation.

➤ HOA disputes where the petitioner can file either arbitration with the DBPR or state court litigation:

- Challenges to the recall of board members;
- Challenges to the election of board members.

➤ HOA disputes that require pre-suit mediation prior to state court litigation. If there is an impasse at mediation, then either party can proceed with state court litigation:

- Use of or changes to a parcel;
- Use of or changes to the common areas;
- Covenant enforcement disputes;
- Amendments to association documents;
- Board and committee meetings;
- Membership meetings (not including election disputes);
- Access to official records.

Covenant Violation Remedies



Levy of Fines and Suspension of Use Rights

- An HOA may levy reasonable fines for violations of the declaration, bylaws, or rules of the HOA.
- A fine may not exceed \$100 per violation against any member. However, a fine may be levied for each day of a continuing violation, with a single 14-day notice and opportunity for a hearing before the covenant enforcement committee, except that the fine may not exceed \$1,000 in the aggregate for HOAs unless otherwise provided in the governing documents.
- For HOAs, a fine 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's fees and costs from the non-prevailing party as determined by the court.
- The HOA may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use the common area amenities and facilities for rules violations.
- Suspensions do not apply to the portion of the common areas used to provide access or utility services to the parcel nor prohibit an owner or tenant from having vehicular and pedestrian access to and from the parcel, including the right to park.

Covenant Violation Remedies



Levy of Fines and Suspension of Use Rights

- A fine or suspension may not be imposed unless the board first provides at least 14 days' written notice of the owner's right to a hearing to the owner at his or her designated mailing or e-mail and, if applicable, to any tenant, sought to be fined or suspended.
- The committee hearing must be held within 90 days after the notice and before a committee of at least three members appointed by the board who are not officers, directors, or employees of the HOA, nor the spouse, parent, child, brother, or sister of an officer, director, or employee.
- The committee may hold the hearing by telephone or online video conferencing. An owner has the right to attend a hearing by telephone or online video conferencing.
- The violation notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the hearing date, location, and access information if held by telephone or other electronic means.
- If the violation is cured before the hearing or in the manner specified in the written notice, a fine or suspension cannot be imposed.

Covenant Violation Remedies



Levy of Fines and Suspension of Use Rights

- The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee, by majority vote, does not approve the fine or suspension, neither can be imposed.
- Within 7 days after the hearing, the HOA shall provide written notice to the owner at his or her designated mailing or e-mail address and, if applicable, any tenant, informing them of the committee's findings, including any applicable fines or suspensions that the committee approved or rejected, and how the owner or tenant may cure the violation, if applicable, or fulfill a suspension, or the date by which a fine must be paid.
- If the violation is not cured and the fine or suspension is approved by the committee, the committee must set a date for the fine to be paid, which must be at least 30 days after the notice of the committee's findings. Attorney fees may not be awarded against the owner based on actions taken by the board before the date set for the fine to be paid.
- Attorney fees and costs may not begin to accrue until after the date noticed for payment in the notice of the committee's findings and the time for an appeal has expired.

Covenant Violation Remedies



Suspension of Use Rights and Voting Rights

- If an owner is more than 90 days delinquent in paying any monetary obligation to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common amenities until the monetary obligation is paid in full.
 - The notice and hearing requirements do not apply to a suspension imposed for this reason.
 - This suspension must be approved at a board meeting and the member must be notified by mail or hand delivery.
- An HOA may suspend voting rights for the nonpayment of any monetary obligation due to the HOA that is more than 90 days delinquent.
 - The notice and hearing requirements do not apply to a suspension imposed for this reason.
 - This suspension must be approved at a board meeting and the member must be notified by mail or hand delivery.
 - The suspension ends upon full payment of all past-due monetary obligations.
- A suspended voting right shall be subtracted from the total number of voting interests for calculating the voting interests available to approve any action, and the suspended voting interests shall not be considered for any purpose, including establishing a quorum or number of voting interests required to conduct an election.

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