

# Larson

EDUCATIONAL SERVICES

Florida Real Estate, CAM and Mortgage School



# 15 Hour Florida CAM Continuing Education eBook

Correspondence  
Course



**Rick Larson**

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## **Courses at Larson Educational Services**

Welcome to Larson Educational Services. It is our goal to make your experience with us both educational and enjoyable. Please take a moment to review the following Frequently Asked Questions, course completion requirement, as well as the information about school policies.

### **What is my continuing education requirement?**

All community association manager licenses expire September 30 of each even numbered year. To renew the license, each licensee must complete 15 hours of approved education comprised of three hours each of the following:

- legal update;
- insurance and financial management topics;
- operation of the community association's physical property;
- human resources topics relating to community association management; and
- additional instruction in any area described above, or in any course or courses directly related to the management or administration of community associations.

### **Must I pass an exam in order to complete my continuing education requirement?**

There is a 15-question final exam at the conclusion of the course. A passing score of 75% is required for successful completion of the course.

### **How do I renew my license once I have completed the Continuing Education?**

Larson Educational Services is required to notify the DBPR within 30 days of course completion. You will receive a Certificate of Completion at the conclusion of the course and we report completion to DBPR electronically on Monday, Wednesday and Friday of every week.

Prior to your initial license expiration date, you will need to visit [www.myfloridalicense.com](http://www.myfloridalicense.com) and follow the directions to renew your license.

### **How much does it cost to renew my license?**

The renewal fee is \$105. To renew your license, visit the DBPR website- [www.myfloridalicense.com](http://www.myfloridalicense.com).

### **Can I carry over continuing education credits between renewals?**

No. After each renewal you must complete 15 hours of continuing education in the following 2-year license period. Any credits earned over 15 hours will be forfeited upon license renewal.

### **What happens if I do not complete the required continuing education prior to the expiration date?**

Your license status will become inactive. During the inactive period you may not perform community association services. To activate the license, you will need to complete the 15 hours of continuing education and renew your license with the DBPR by paying the license renewal fee within 12 months from the date of your license expiration date.

**IMPORTANT TELEPHONE NUMBERS AND WEBSITES:**

**Larson Educational Services**

[Larsoned.com](http://Larsoned.com)

Student Support ..... 239-344-7510

**Dept. of Business & Professional Regulation**

[MyFloridaLicense.com](http://MyFloridaLicense.com)

Contact Center .....1-850-487-1395

To reach an operator quickly press: 4, 4, 2, 1

**LARSONTRAK:**

**Visit: [www.Larsoned.com](http://www.Larsoned.com) and click the 'LarsonTrak Student Login' link.**

The LarsonTrak student portal gives you access to:

- Your current and past classes
- Attendance records
- Course completion certificates
- Automatic personalized reminders for future education and license renewal requirements
- And much more!

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# CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

## Legal Update

### Legal Update Topic (LU)

*Individual Course ID No: 9631319*



# Topics:

## Legal Update

Upon completion of this course, students should be able to:

- understand HB 1339 relating to community affairs
- identify key points of SB 664 relating to verification of employment eligibility
- describe SB 56 relating to community association assessment notices
- understand SB 76 relating to insurance
- explain elements of SB 630 relating to community associations
- understand the impacts of SB 1966 relating to department of business and professional regulation
- describe the education requirements for community association managers
- explain HB 841 Relating to community associations
- understand requirements for community associations to keep and maintain official records
- understand detailed requirements for a condominium to post certain information on a website that is accessible to unit owners and employees.
- describe a condominiums financial reporting responsibilities
- understand requirements to complete alterations or additions to condominium property
- understand condominium, cooperative and HOA fines and suspension
- explain notice requirements of meetings and communication by members for condominiums, cooperatives and HOAs
- explain amendments to HB 841 pertaining to cooperative board of directors and condominium board members
- understand condominium board member recall
- explain HOA elections
- describe HOA amendment and rental restrictions
- explain CS/HB 631 as it pertains to “customary use”
- describe HB 617 relating to covenants and restrictions



- understand HB 29 relating to military and veterans affairs
- understand paperless licensing describe CS/CS/HB 437 relating to community development
- explain the purpose and content of SB 4 relating to charging station liens on condominium common elements
- understand CS/SB 82 related to state governance over vegetable gardens
- describe CS/CS/HB 1011 homeowner's insurance policy disclosure notice regarding flood insurance

## Legal Update

### **61E14-2.001 Standards of Professional Conduct**

The Council approved additional language in **61E14-2.001 Standards of Professional Conduct** to address the requirements of advertisement or advertising by licensed community association managers.

During the performance of community association management services, ***the license number of a licensee shall be stated in each offer of services, business proposal, advertisement, or advertising, regardless of medium, used by the licensee. The terms advertisement and advertising shall include the name under which professional services are performed and include business stationary but not promotional novelties such as balloons, pencils, trinkets, or articles of clothing.***

### **CS/CS/SB 56 Community Association Assessment Notices**

This law provides additional notice requirements for condominium, cooperative, and homeowners' associations when collecting assessments. For community associations that send out invoices for assessments or statements of the account to unit or parcel owners, the bill revises how an association may deliver and change its method of delivery:

- Requires any invoice for assessments or statement of account to be sent by first-class mail or electronic transmission to the owner's email address maintained in the association's official records.
- Requires the association, before changing the method of delivery for any invoice for assessment or statement of account, to deliver the written notice of such change to the owner.
- Requires the notice to be sent by first-class mail and delivered to the owner's address maintained in the association's official records at least 30 days before the delivery method is changed.
- Requires the owner to affirmatively acknowledge his or her understanding that the association has changed its method of delivering the invoice for assessment or statement of account to delivery by electronic transmission.
- Requires the owner's affirmative acknowledgment to be maintained by the association as an official record, but such record is not accessible to other owners as an official record.

Community associations may not require the payment of attorney fees related to past due assessments without first delivering a written notice of late assessment to the unit or parcel owners.

- The written notice must specify the amount owed and allow the owner to pay past due assessments without paying additional attorney fees.
- The law provides the form of this written notice.
- The law authorizes the use of a sworn affidavit as the method for associations to provide a rebuttable presumption that the association complied with these notice and delivery requirements for the notice of late assessment.

The law also increased from 30 days to 45 days the period of time a condominium or cooperative unit owner has to pay a monetary obligation after receiving an association's Notice of Intent to Record a Claim of Lien.

### **SB 76 Relating to Insurance**

Contractors are prohibited from engaging in certain solicitations or advertisements that are aimed toward motivating consumers to submit insurance claims for roof damage. A notice of these prohibitions must be included in all roof contracts with residential property owners. Any violation is subject to discipline by the Construction Industry Licensing Board. The law also specifies additional criminal penalties for unlicensed contractors committing these violations.

### **SB 630 Relating to Community Associations**

For condominium associations, the law:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Provides for the operation of more than one condominium by a condominium association (multicondominium);
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from seven years to one year after receipt of the bid;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded to a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;

- Permits associations to electronically transmit the written notice of a meeting;
- Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period;
- Removes the prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County. For cooperative associations, the bill:
- Provides that an interest in a cooperative unit is an interest in real property; and
- Permits board or committee members to appear and vote by telephone, real-time video conferencing, or similar real-time electronic or video communication.

For condominium and cooperative associations, the law:

- Prohibits an association from requiring members to demonstrate any purpose or state any reason for inspecting official records; and
- Provides a process to resolve disputes by initiating presuit mediation as an alternative to mandatory nonbinding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.

For condominium, cooperative, and homeowners' associations, the law:

- Provides that recall and election disputes are not eligible for mediation and must be arbitrated by the division or filed in court;
- Provides additional emergency powers to respond to injury and to an anticipated declared state of emergency; and
- Clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

For homeowners' associations, the law:

- Permits an association to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records;
- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community;
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts;
- Specifies the types of expenses the developer is not obligated to pay.
- Provides for the prospective application of an amendment to the governing documents that restricts the right to rent a parcel;
- Provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner; and
- Revises the conditions under which non-developer members of a homeowners' association are entitled to elect the majority of the board, to consistently distinguish between developer members and non-developer members.

**61E14-4.001 Continuing Education Renewal Requirements.**

- (1) All community association manager licensees must satisfactorily complete a minimum of ~~20~~ **15** hours of continuing education per biennial renewal cycle. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses. No license shall be renewed unless the licensee has completed the required continuing education.
- (2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.
- (3) The required 15 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003, F.A.C., in the following areas:
  - (a) **4 3** hours of legal update seminars. The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII, 617, 718, 719, 720, and 721, F.S., and other legislation, case law, and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.
  - (b) **4 3** hours of instruction on insurance and financial management topics relating to community association management.
  - (c) **4 3** hours of instruction on the operation of the community association's physical property.
  - (d) **4 3** hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.
  - (e) **4 3** hours of additional instruction in any area described in paragraph (3)(b), (c) or (d) of this rule or in any course or courses directly related to the management or administration of community associations.
- (4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during a biennial renewal cycle.
- (5) Course instructors may receive continuing education credit hours in the amount of hours approved by the Council for licensees only once every biennial renewal cycle for each approved course taught by the instructor.

- (6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the continuing education requirements set forth in subsection (1), above, prior to license renewal. "More than 24 months" means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the continuing education requirements set forth in subsection (1) above, until the end of the next renewal cycle.

**61E14-1.001 Prelicensure Education Requirements.**

(1) All community association manager applicants must satisfactorily complete a minimum of ~~20~~**16** in-person classroom hours of instruction of 50 minutes each within 12 months prior to the date of examination. No applicant shall be allowed to take the licensure examination unless the applicant provides documentation of completion of the requisite prelicensure education. Each contact hour shall consist of at least 50 minutes of classroom instruction.

(2) The 16 hours of prelicensure education shall be comprised of courses in the following areas:

- (a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations – 20%;
- (b) Procedure for noticing and conducting community association meetings – 25%;
- (c) Preparation of Community Association Budgets and Community Association Finances – 25%;
- (d) Insurance matters relating to Community Associations – 12%; and
- (e) Management and maintenance – 18%;

**CS/CS/CS/HB 841: Community Associations**

**Official Records**

1. Unit owners are able to inspect the official records. The deadline to make records available to unit owners and their agents was ***extended from 5 working days to 10 working days*** from receipt of written request.
2. Prior law required each condominium and cooperative association to maintain official records for at least seven years. A condominium association now must ***permanently maintain*** the following documents:
  - A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
  - Meeting minutes; and

- A copy of the plans, permits, warranties, and other items required by the developer.
3. The following official records must be ***maintained for 7 years***:
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
  - A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
  - Accounting records for the association;
  - All contracts for work, including bids;
  - All other written records which are related to the operation of the association; and
  - All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.
4. ***Electronic records relating to voting*** must be kept by condominium and cooperative associations for 1 year from the date of the election, vote or meeting to which the document relates.

### **Condominium Websites**

1. Each condominium association with 150 or more units (that does not manage timeshare units) is required to post certain documents on a website that is only accessible to unit owners and employees of the condominium association.
2. The requirement to post any proposed financial reports was replaced with a requirement to ***post any monthly income or expense statements to be considered at a meeting.***
3. A condominium association's website must include:
  - ***A summary of bids*** for materials, equipment, or services which exceed \$500 was added to the list of items that ***must be posted and maintained on the website for 1 year.*** (Note that the association may post the complete copies of the bids in lieu of those summaries);
  - The recorded ***declaration*** of each condominium operated by the condominium association and each amendment to a declaration;
  - The recorded ***bylaws*** of the condominium association, including amendments to the bylaws;



- The **articles of incorporation** of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be the articles of incorporation filed with the Department of State;
- The **rules** of the condominium association;
- **Any management agreement**, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility.
- The **annual budget** and any proposed budget to be considered at the annual meeting;
- The **certification** of each director;
- **All contracts** or transactions between the condominium association and any director, firm, corporation, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a financially interested director or officer;
- **Any contract or document regarding a conflict of interest** or potential conflict of interest by a community association manager or a board member;
- The **notice of any unit owner meeting and the agenda** for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page; and
- **Any documents to be considered during a meeting** or listed on the agenda for a meeting. These **must be posted at least 7 days before** the meeting where the document will be considered.
- **A condominium may not post the following protected documents** or restricted information to its website unless the information or documents are redacted:
  - Any record **protected by the lawyer-client privilege** or the work-product privilege;
  - Information obtained by the condominium association in connection with the **approval of the lease, sale, or other transfer of a unit;**
  - **Personnel records** of condominium association or management company employees;
  - **Medical records** of the unit owners;

- **Social security numbers**, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses of a unit owner other than those provided to fulfill notice requirements;
- Electronic security measures that are used to safeguard data, **including passwords**; and
- The software and **operating system** used by the condominium association, which allows the manipulation of the data.

### Condominium Financial Reporting

1. Condominium associations are required to complete an **annual financial report** of the previous year's financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:
  - **Complete an annual financial report for the previous fiscal year within 90 days** after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
  - **Provide unit or parcel owners the financial report** or notice that the report is available upon request without charge **within 21 days** after the final financial report is completed by the condominium or received from the third party, **but not later than 120 days after the end** of the fiscal year or calendar year, or other date as provided in the bylaws; and
  - Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
    - An association with total annual revenue of less than \$150,000 must prepare a report of **cash receipts and expenditures**.
    - An association having total annual revenues between \$150,000 and \$300,000 must prepare **compiled** financial statements;
    - An association having total annual revenues between \$300,000 and \$500,000 must prepare **reviewed** financial statements;
    - An association having total revenues more than \$500,000 must prepare **audited** financial statements.
2. If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:
  - **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.
3. Such meeting and approval must occur before the end of the fiscal year and is **effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year.**
  4. **A unit owner who does not receive the financial report may contact the Division** to report an association's failure to provide a copy of the financial report within the required time.
  5. If the Division determines that the association failed to provide the financial report in a timely manner, the **Division may require the association to provide the financial report to the unit owner and the Division within five business days.**
  6. **If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements.**

#### **Alterations or Additions to Condominium Property**

1. CS/CS/CS/HB 841 requires **approval by 75 percent of voting interests prior to work beginning on any material alterations or additions of condominium property.**
2. An association is prohibited from restricting a unit owner from installing an electric vehicle charging station within the boundaries of their common element parking area:

**"A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area."**

This provision goes on to clarify how the installation of an electric vehicle charging station must be governed. The owner must:

- Comply with bona fide **safety** requirements;
- Comply with reasonable **architectural** standards;
- Use a licensed and registered **electrical contractor** or engineer;
- Provide a **certificate of insurance** naming the association as an additional insured on the owner's insurance policy;

- **Reimburse** the association for the **cost of any increased insurance premium**;
- Assure that the electricity charges are **separately metered**; and
- **Pay all costs.**

The association may use its assessment powers to enforce the payment.

3. The association will grant an **implied easement** across the common elements to the unit owner **for the installation** of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station.
4. **A lien may not be filed against the association** for any labor performed or materials furnished during the installation of a charging station. However, a lien may be filed against the unit.

### **Condominium, Cooperative, HOA Fines and Suspension**

1. All associations **may levy fines and suspend** a unit or parcel owner or guest for violating any provision in the governing documents.
2. A board must give at least **14 days written notice and the opportunity for a hearing** before imposing a fine or suspension.
3. CS/CS/CS/HB 841 requires a condominium or cooperative to hold the hearing in front of a group of **association members who are not on the board.**
4. The action must be approved by **majority vote.**
5. A fine approved by the committee is **due five days** after the date of the committee meeting.
6. The condominium or cooperative must provide **written notice** of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant or guest of the unit owner.

### **Notice of Meetings and Communication by Members for Condominiums, Cooperatives, and HOAs**

1. Associations must post notice of all board meetings in a conspicuous place on the association's property at least 48 hours in advance.
2. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered. If a parcel owner in a HOA provides written consent, the notice may be provided by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.

3. Condominium and cooperative associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice at least 14 days before the meeting. They must also post notice in a conspicuous place at least 14 days before the meeting. If a condominium or cooperative association opts to broadcast notice in lieu of posting notice, it must do so at least four times every broadcast hour of each day for 14 days.
4. CS/CS/CS/HB 841 allows **condominium and cooperative associations to adopt rules for noticing all board and unit owner meetings on a website** where the time requirements for physically posting the board meetings are met.
5. Any rule adopted for website notice must **require the association to send an electronic notice providing a hyperlink to the posting to all unit owners whose email addresses are part of the official records** in the same manner as notice for a meeting of the members.
6. **Notice by website is in addition to the other notice requirements.** Any owner who consents to receiving notice for a meeting by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass emails sent to members by an association for the purpose of giving notice.
7. An **HOA is permitted to give notice by electronic transmission** to any parcel owner who provided written consent and a fax number or email address to the HOA.
8. Board members for **condominium associations may use email as a form of communication.**
9. The bill permits members of the board of directors for cooperative associations and HOAs to use email as a form of communication but **a board member may not cast a vote via email.**

### **Cooperative Common Expenses and Bulk Contracts**

1. Common expenses are paid by the unit owners of a cooperative association and are included in the association's annual budget to its members.
2. CS/CS/CS/HB 841 amended **cooperative association** law to mirror condominium association law by providing that **bulk contracts for communication services, internet services, and information services may be considered a common expense.**

## Cooperative Board of Directors and Condominium Board Members

1. CS/CS/CS/HB 841 amends cooperative association law to mirror condominium association law by providing that:
  - A director or officer is deemed to have **abandoned their office if the officer or director is more than 90 days delinquent** in the payment of any monetary obligation to the association; and
  - In residential cooperatives that are more than 10 units, **co-owners of a unit are prohibited from serving as members on the board at the same time** unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.
2. The new condominium term limit provision limits time in office to eight consecutive years **unless approved by affirmative vote of two-thirds of all votes cast in the election.**

## Condominium Board Member Recall

1. A member of a condominium association board **may be recalled and removed from office by a majority of all the voting interests of the association at a special meeting or by an agreement in writing by a majority of all voting interests.**
2. If a recall is approved by a majority of all voting interests, the **board must notice and hold a board meeting within 5 business days** of the special meeting to recall the board member or members.
3. The **recall is effective immediately** and the recalled member or members must turn over any records and association property in their possession to the board within 10 days of the vote.
4. **A recalled board member may file a petition to the Division for arbitration** challenging the validity of the recall.

## Bulk Assignees and Bulk Buyer

1. In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain liabilities to enable economic opportunities for successor purchasers of distressed condominiums.
2. Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it contained termination dates that have been extended from 2012 to 2015 to 2016 and 2018.
3. CS/CS/CS/HB 841 **removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.**

## HOA Elections

1. HOAs are required to hold elections at its annual meeting or as provided in its governing documents.
2. An election is not required unless more candidates are nominated than vacancies exist.
3. CS/CS/CS/HB 841 provides that ***if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted.***

## HOA Amendments and Rental Restrictions

1. CS/CS/CS/HB 841 revised the process for amending HOA governing documents to require ***an amendment to the governing documents contain the full text of the provision to be amended, with the new language underlined and proposed deleted language stricken with hyphens.***
2. However, ***an association may reference the governing documents in the event an amendment is too extensive*** and the inclusion of the full text with stricken and underlined text would hinder understanding of the proposed amendment.
3. ***An amendment to a governing document enacted after July 1, 2018, prohibiting a parcel owner from renting the home or otherwise altering or limiting an owner's ability to rent only applies to a parcel owner who acquires title to the home after the effective date of the amendment*** or to a parcel owner who consents to the amendment.
4. For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when the beneficial ownership of the parcel does not change.
5. Meeting notices are to be mailed or delivered to the ***parcel owner's mailing address on the property appraiser's website*** in the county where the parcel is located, ***or with the owner's consent, electronically transmitted*** in a manner authorized by the association.

## Condominium Conflicts of Interest

1. Previous law had provided that a condominium may not hire an attorney who represents the condominium's management company.
2. CS/CS/CS/HB 841 ***repeals the provision that a condominium may not hire an attorney who represents the condominium's management company.***

## **CS/HB 631: Possession of Real Property**

HB 631 "blocks local governments from adopting ordinances to allow continued public entry to privately owned beaches even when property owners may want to block off their land" and restrict public use.

The state generally owns the property under navigable waters up to the mean high water mark and upland landowners own the land down to that mark. ***The general right of the public at large to possess and use certain dry sand areas for recreational purposes is an example of "customary use."*** Where a customary use of a dry sand area is shown, the property owner may not use traditional causes of action like ejectment, forcible entry, or trespass to stop such public use of the private land.

The Florida Supreme Court has ruled that ***if a private property owner tries to put up a fence or calls police to eject beachgoers who have been using the beach for years, the local government can cite "customary use" to allow the public to remain*** — but only if such use has been "ancient, reasonable, without interruption and free from dispute."

It has been a constant battle in some parts of Florida, with property owners in some cases going so far as to try to rope off parts of the beachfront to keep people away. Three counties — St. Johns, Volusia and Walton — have passed local ordinances barring property owners from taking such action.

***The new law restricts any such ordinances enacted after Jan. 1, 2016.*** St. John's and Volusia were passed before that date and are left standing. The only beach access ordinance being abolished is the one passed last year in the Panhandle's Walton County.

***A governmental entity seeking to establish the customary use of privately-owned lands is required to:***

- ***adopt, at a public hearing, a formal notice of intent,***
- ***provide notice to affected parcel owners, and***
- ***file a complaint with the circuit court to determine whether the land is subject to the customary use doctrine.***

The law won't automatically cut off public access to the Florida beaches that front private property, but it will make it much more difficult for local governments to regulate access the way they see fit. Now cities and counties will have to get a judge's approval before enacting such an ordinance, and to do that, they'll have to sue private landowners.



### **HB 617, Relating to Covenants and Restrictions**

HB 617 created Chapter 712, the "Marketable Record Title Act." It expands the types of covenants and restrictions that may be preserved by residential and nonresidential property owners' associations. It includes a new "summary process" for property owners' associations to preserve covenants and restrictions and also allows communities without a mandatory homeowners' association to revitalize covenants and restrictions that have expired

### **HB 29, Relating to Military and Veterans Affairs**

***Upon request within six months after release from active duty, a board regulated under general law may accept periods of training, study, apprenticeship, or practical experience in the Florida National Guard or the United States Armed Forces Reserves for those members whose training or study were interrupted when they were ordered into active duty.*** The board must determine if the training, study, or practical experience is substantially the same as the standard and type required under the laws of this state.

Also, a military member who engages in his/her profession in the private sector for profit during active duty and for a period of two years after discharge from active duty, must comply with all renewal provisions ***except remitting a fee for the license renewal***. The bill also provides for the waiver of the license renewal fee for the spouse when present in the state because of a members' active duty and for a surviving spouse of a member who at the time of death was serving on active duty and died within two years preceding the date of the renewal.

### **Announcement from the DBPR: Paperless Licensing**

The Department of Business and Professional Regulation is excited to announce an advancement in how we license community association managers and community association management firms in the State of Florida.

The Department has implemented an innovative way to expedite the licensing process for community association managers and community association management firms. ***The Department will no longer be mailing licenses upon issuance, as licensees can now print their licenses by logging into their secure online account with the Department.*** This will allow new licensees to enter the work force at least 7 to 10 business days early, whereas, in the past, they would have to wait for the license to arrive in the mail. In addition to new licenses, this process will allow licensees to renew online and print the license at their convenience, as well as print duplicate licenses as needed without paying a fee.

### **SB4, Housekeeping Amendment**

718.121 Liens related to charging stations on condominium limited common elements

Reviser's note.—Amended to confirm the editorial insertion of the word "be" to improve clarity.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of an electronic vehicle charging station pursuant to s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may **be** filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

### **HB 7103 Fire Sprinkler Retrofit**

An ELSS – Engineered Life Safety System – within a condominium consists of 3 components:

1. Partial automatic fire sprinkler system installation in common areas and one sprinkler head through the front door into each dwelling unit;
2. Integrated smoke detection and alarm system; and
3. A system of approved compartmentation to help restrict a fire from spreading.

***This bill provides some relief for older high rises (75 feet or higher) that had been faced with installing an ELSS by the end of 2019. They now have until the end of 2023 to install an ELSS.*** The bill also authorized a report on the number of impacted communities to be delivered to the Governor, Senate, President, and Speaker of the House.

**CS/CS/HB 1011: Homeowner's Insurance Policy Disclosures**

This notice is required in homeowner's property insurance policies after January 1, 2019:

**"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."**

**CS/SB 82: Vegetable Gardens**

***Prohibits local governments from regulating vegetable gardens*** on residential properties except as otherwise provided by law, and specifies that such regulations are void and unenforceable

**CS/CS/HB 437: Community Development Districts**

Authorizes certain lands within a county or municipality which a petitioner anticipates adding to a new community development district to be identified in a petition to establish a new district. It includes ***detailed procedures for amending boundaries of a district to add land and authorizes community development districts to merge with another type of special district*** created by a special act or by filing a petition for the establishment of the new district. The bill also authorizes community development district merging with another type of district to enter into merger agreements for certain purposes.

**HB 1339: Relating to Community Affairs**

The bill amends ch. 723, F.S., relating to mobile home tenancies. The bill clarifies the significance of the rental agreement and the length of a tenancy, modifies required prospectus disclosures pertaining to increases in the number of lots in the park, the addition of park improvements, changes in services or facilities, and required homeowner improvements. The bill codifies homeowner requirements regarding modifications to the home and removal of improvements when vacating the park. The bill prohibits a park owner from collecting certain taxes and charges in excess of what the park owner has paid. The bill allows a homeowner committee to address all lot rental increases with a park owner. The bill also modifies the eviction process; and providing for homeowner association elections and eligibility requirements, as well as record-keeping and notifications to park owners.

**SB 664: Relating to Verification of Employment Eligibility**

The bill prohibits the approval of certain economic development incentive applications after a specified date. The bill requires public employers, contractors, and subcontractors to register with and use the E-Verify system. The bill prohibits such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system. The bill requires private employers to verify the employment eligibility of newly hired employees beginning on a specified date, etc.

# CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

## **Association Insurance**

**Insurance and Financial Management Topic (IFM)**

*Individual Course ID No: 9629902*



# Topic: Insurance and Financial Management

## *Introduction*

The Florida community association management industry continues to experience dramatic changes in the marketplace and in the regulatory realm. This course examines foreclosure and insurance, items that affect all community associations and, therefore, all community association managers.

### **Learning objectives:**

Upon completion of this course, students should be able to:

- Discuss the types and characteristics of community association property insurance
- List statutory requirements for condominium and cooperative insurance coverage
- Understand fidelity bonding and liability insurance for directors and officers
- Explain flood insurance, performance bond and workers' compensation insurance
- Describe the requirements for insurance policy access
- Describe the power of the association to bring an action to recover a money judgment
- Explain the notice requirements in order to record and foreclose a lien for assessments
- Understand the foreclosure process
- Describe the required contents of a claim of lien
- Describe recent court decisions related to association rights and responsibilities
- Explain new foreclosure rules issued by the Supreme Court of Florida
- Describe what happens when an association acquires title by foreclosure
- Explain the dangers of attempting to foreclose when a prior lien exists
- Discuss the steps that may be taken by an association when an owner is delinquent and the unit is occupied by a tenant

## **I. PROPERTY INSURANCE**

Insurance is designed to protect property and individuals in the event of injury or property damage or destruction. The Board of directors of the community association is responsible for protecting the association's assets, specifically the common property. The cost of the insurance is specified in the budget and is included in the owner's assessments.

### **A. The Condominium Act, INSURANCE §718.111(11), F.S.**

Property, fire and casualty insurance is replacement cost coverage based on the insurable value. Homeowners' associations and cooperative associations provide coverage as defined by the documents. This subsection of Chapter 718 applies to every residential condominium in the state, regardless of the date of its declaration of condominium.

1. Adequate property insurance must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal at least once every 36 months or an update of a prior appraisal.
2. An association or group of associations may provide adequate property insurance through a self-insurance fund.
3. A deductible is the amount of money the insured party must pay before the insurance company's own coverage plan begins. Statutes dictate the treatment of deductibles by community associations.
  - a. Must be consistent with industry standards
  - b. May be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.
  - c. Established by the board at a meeting based upon the level of available funds.
4. Freestanding buildings need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property.
5. Primary coverage "must" be provided for all portions of the condominium property in accordance with the original plans or alterations.

6. The coverage must exclude
  - a. All personal property within the unit or limited common elements
  - b. Floor, wall, and ceiling coverings
  - c. Electrical fixtures
  - d. Appliances
  - e. Water heaters
  - f. Water filters
  - g. Built-in cabinets and countertops
  - h. Window treatments
7. Limited common elements may either be insured by the unit owner(s) or by the association at the user's cost
- 8 Section 718.111(11)(j) Reconstruction
  - a. Condominium property that must be insured by the association shall be reconstructed, repaired or replaced as necessary by the Association as a common expense (regardless of insurance proceeds).
  - b. Absent an opt-out vote, any repairs necessitated by a casualty loss which must be insured by the Association must also be repaired by the Association even if insurance proceeds are unavailable.
  - c. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board but may be conditioned upon:
    - i. the approval of the repair methods,
    - ii. the qualifications of the proposed contractor, and
    - iii. the unit owner obtaining all required permits and approvals in advance.
  - d. All deductibles, uninsured losses and other damage in excess of insurance coverage are the responsibility of the association as a common expense
  - e. However, a condominium association may opt-out of the law and allocate repair or reconstruction expenses in the manner provided in the Declaration as originally recorded.



## INSURANCE CASE STUDIES

### **Case #1: Condominium Air Conditioning Damage Caused by Lightning**

The outdoor air conditioning unit servicing a condominium unit owned by Jones was struck by lightning and inoperable. Jones immediately notified the management company to make repairs. A representative refused, explaining that the declaration defines the air conditioning equipment as "limited common elements" and that as owner of the property, Jones was required to "maintain, repair, and replace" these items. Based on that information Jones turned the claim into her insurance company. The insurance carrier denied the claim stating that the damage to the air conditioning unit was the responsibility of the association.

**Q:** Is Jones out of luck or is someone making an incorrect representation?

### **Case #2: Condominium Water Damage from a Leak**

Harris, the owner of a condominium unit on the ground floor of a three-story building, suffered water damage resulting from the extreme overflow of a bathtub in a unit above. Harris did not have insurance. Harris decided to file a claim to the insurer of the unit above for damage to personal property and notified the association that it would be responsible for repairing the drywall. Both told him that it was his own risk to be uninsured and he was out of luck. In particular, the association representative told Harris that the drywall damage was the result of routine wear and tear and was his own responsibility.

**Q:** Is Harris out of luck or is someone making an incorrect representation?

### **Case #3: Condominium Board Says Owner Must Carry Insurance on the Unit**

Tshida, a unit owner in a high-rise condominium, received a notice from the board stating that she was required to deliver a current copy of an HO-6 Certificate of Insurance or face penalties. Tshida owns the property outright and when she purchased the property, she wasn't aware of a requirement to purchase insurance.

**Q:** Does the law require that Tshida carry insurance on her condominium unit? What legal action can be taken against Tshida if she chooses not to have insurance on the unit?

## SOLUTION

### Case #1: Condominium Air Conditioning Damage Caused by Lightning

**A:** The management company representative made an incorrect representation. The association is obligated to insure the condominium property and to repair the condominium property following damage caused by an insurable event.

Chapter 718 provides that the association's property insurance policy must provide coverage for all portions of the condominium property as originally installed or replacements of like kind and quality, in accordance with the original plans and specifications. The statute then lists excluded items (listed at item 6 above): all personal property within the unit or limited common elements; floor, wall, and ceiling covering; electrical fixtures; appliances; water heaters; water filters; built-in cabinets and countertops; window treatments and replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit.

The outdoor air conditioning unit is part of the "condominium property as originally installed" and is not on the list of "excluded items" and is therefore the insurance responsibility of the association.

This is true even if the declaration defines air conditioning equipment as limited common elements and require the owner to maintain, repair, and replace these items.

The duty to maintain, repair, or replace is in the declaration, but the duty to insure and repair after an insurable event is set by statute.

Because the air conditioning unit was damaged by an insurable event, it must be reconstructed, repaired, or replaced as necessary by the association and must absorb any deductible as a common expense shared by all unit owners.

## **SOLUTION**

### **Case #2: Condominium Water Damage from a Leak**

**A:** The association insures the drywall and is responsible for the cost of repair or replacement.

The Association is required to insure "all portions of the condominium property as originally installed or replacement of like kind and quality." Drywall is part of the original condominium property as originally installed and is not on the list of items that are excluded from the association's insurance responsibility. Therefore, if drywall is damaged due to an "insurable event," such as the overflow of a bathtub, the Association is responsible to repair or replace it. The deductible is a common expense paid for by all owners.

But here are a couple of twists:

1. If there was negligence or a violation of the condominium documents by the owner above, Harris may seek contribution for his personal property loss and the association may seek contribution for the drywall.
2. If the damage results from something other than an "insurable event" - such as a slow, continuous leak - then the work necessary due to routine wear and tear will be covered by the maintenance provisions of the declaration.

## **SOLUTION**

### **Case #3: Condominium Board Says Owner Must Carry Insurance on the Unit**

**A:** There used to be a requirement in Chapter 718 requiring unit owners to carry HO-6 insurance coverage. However, that provision was created in 2008 and removed in 2010. The current version does not contain an express requirement that unit owners carry insurance.

The condominium association has the legal obligation to maintain insurance on all of the condominium improvements, both inside and outside the unit, with some exceptions. The statute expressly excludes from the association's insurance responsibility "all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner." This language clearly makes the owner responsible for the property but in no way requires the purchase of insurance.

It is possible that the association documents require owners to carry insurance. The fact that Tshida "wasn't aware of a requirement to purchase insurance" doesn't excuse her from compliance. Some documents go on to state that in the event an owner fails to carry insurance, the association has the ability to 'force-place' the insurance and seek to collect the cost from the owner.

**B. Fidelity Bonding**

The association MUST maintain (at its cost) insurance or fidelity bonding of all persons who control or disburse funds of the association.

1. Must cover the maximum funds that will be in the custody of the association or its management agent at any one time.
2. The fidelity bond covers the association for losses incurred as a result of fraudulent or dishonest acts of the president, secretary and treasurer plus the management agent and employees who control or disburse funds of the association.

**C. Association Liability Insurance for Directors and Officers**

An association MAY obtain liability insurance for directors and officers.

1. Provides protection to the association against legal liability which it may incur through the conduct of its activities or the provision of services by its Board.
2. Covers basic incidents and defense in lawsuits against the association

**Directors and Officers Liability Lawsuits**

There have been a number of lawsuits filed by members against the association for such things as reimbursement for costs sustained as a result of damages to property due to inappropriate Board decisions. In many cases the amount of money sought by the unit owner or owners is less than what it costs to defend the claims. Is the association's Board of directors protected against claims of negligence or breach of fiduciary duty?

In a recent lawsuit an owner sued the association claiming the Board failed to adequately maintain the roof and other portions of the property. The Court determined that the Board was NOT covered because of an exclusion for loss in connection with any claim arising out of any damage, destruction, loss of use or deterioration of any tangible property including mold, toxic mold, mildew, fungus, or wet or dry rot.

The owner was successful in gaining reimbursement for costs sustained as a result of damages to property that would not otherwise exist if the Board had appropriately attended to the needs of the property. Liability claim denials are becoming more prevalent, so check your policy so you understand what is EXCLUDED from coverage and compare policies before renewing.

**D. Flood Insurance**

An association MAY obtain flood insurance to provide coverage for buildings and contents.

**Condominium Flood Insurance: “may” or “shall”**

An association is clearly required to purchase flood insurance if mandated in the governing documents. But what if the documents are silent?

The Florida Condominium Act provides that an association “may” obtain and maintain flood insurance for the condominium property, but it also states that an association “shall” obtain and maintain adequate property insurance. Clearly flood insurance is property insurance. So which is it: may or shall?

Some are making the “must” argument, claiming that adequate property insurance would include flood insurance, particularly if the condominium is located in a FEMA Special Flood Hazard Area (SFHA). This may be a matter for the Board to discuss with association legal counsel and its insurance agent.

**E. final step**

A performance bond is a surety bond issued by an insurance company to guarantee satisfactory completion of a project by a contractor.

1. Association may require contractors to provide a performance bond
2. Labor and material payment bond is usually issued with performance bond to cover contractor failure to pay labor, materials, etc.

**F. Workers’ Compensation**

Employers are required to provide workers’ compensation insurance to cover employees who are injured while working or who contract an illness as a result of the work. The insurance pays for all medical expenses and provides benefits for lost wages.

1. An employer in the non-construction industry who employs 4 or more part- or full-time employees must obtain workers’ compensation coverage
2. Corporate officers are considered employees, unless they elect to exempt themselves

**G. Insurance Policy Access**

Association insurance policies are official records of the association and may be inspected by members and their representatives.

**H. Florida Department of Financial Services**

The sale of insurance in Florida is regulated by the Florida Department of Financial Services.

## I. How to Review Your Condo Association Master Insurance Policy

1. **Each building's replacement cost.** Make sure you factor in type of construction, year built, square footage, number of stories, and other features of your building. Building in an inflation factor to your master policy can help mitigate some of this, but the condo association should still review each building's value every few years.
2. **Directors & officers coverage.** Not all condo associations have this coverage. Considering its minimal cost, it is a wise investment to protect the interests of the association.
3. **Employee dishonesty limit.** This limit is equal to the amount of money the condo association has in the bank. This value should be regularly reviewed.
4. **Sewer or drain back-up.** Sewer and drain back-up actually happens quite frequently with condo associations, and this coverage would pay for the ensuing damages/repairs. Typically, this coverage must be added to the master policy and has limits of \$25,000, \$50,000, and \$100,000.
5. **Umbrella.** This coverage kicks in when the limits of the **general liability policy** are exceeded. Umbrella coverage could be critical in the event a large claim is made over a drowning in the condo pool or an accident on the playground, for example.
6. **Flood coverage.** If you are in a flood zone, make sure you work with your insurance agent to consider flood coverage.
7. **Wind coverage.** This coverage might be included in your master policy, but in Florida it is typically purchased separately. The price for this coverage is usually considerable because it pays for all wind-related damage, including hurricanes.
8. **Wind deductible.** If you have a wind deductible, it's important to find out if it is a per season or per occurrence deductible.
9. **Your agent.** Many condo associations assume that they are stuck with an agent, even if they don't feel he/she is competent or trustworthy. In reality, you can keep the same coverage with the same insurance company and switch agents.
10. **Premium.** Are you paying too much for your master insurance policy? If so, don't be afraid to negotiate.

**II. ASSOCIATION LIEN FOR ASSESSMENTS AND FORECLOSURE—****A. 718.116 Assessments, Liability, Lien and Priority**

1. A unit owner, regardless of how his or her title has been acquired, is liable for all assessments which come due while he or she is the unit owner.
2. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:
  - a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
  - b. One percent of the original mortgage debt
3. An association that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments and fees that came due to any other association before the association's acquisition of title.
4. The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title.
5. If the unit is rented prior to the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent.
6. The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.
7. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure must pay some (?) or all of the common expenses coming due during the period of such ownership.
8. Within 15 days after receiving a written request, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association.
9. A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment (with some exceptions for developer-controlled associations).

**B. Owner is Delinquent and Unit is Occupied by a Tenant**

1. If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner



related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

- a. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 718.116(11), Florida Statutes, the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to (full address), payable to (name).

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 718.116(11), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

- b. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.
  - c. The association shall, upon request, provide the tenant with written receipts for payments made.
  - d. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.
2. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord.
  3. The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

**C. Filing and Foreclosure of the Association Lien**

If regular or special assessment payments are in default, the Board has the power to bring an action to recover a money judgment without waiving their right to file a lien. If they choose to file a lien it may be foreclosed in the same manner as a mortgage. There are strict notice requirements in order to record and foreclose a lien for assessments.

1. The association may accelerate, file and foreclose on defaulted assessment payments, interest and collection costs but not late fees
2. The lien must be recorded with the Clerk of Circuit Court in the county where the property is located
3. Advance notice by first class and/or certified mail (or personal delivery cooperative) is required prior to recording the lien AND prior to foreclosing
  - a. Homeowners' association  
45 days
  - b. Condominiums and cooperatives  
30 days

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN	
RE: Unit ___ of _____ (name of association)	
The following amounts are currently due on your account to _____ (name of association) and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:	
Maintenance due__ (dates)	\$ _____ .
Late fee, if applicable	\$ _____ .
Interest through __ (dates) *	\$ _____ .
Certified mail charges	\$ _____ .
Other costs	\$ _____ .
<b>TOTAL OUTSTANDING</b>	<b>\$ _____ .</b>
*Interest accrues at the rate of _____ percent per annum.	

4. A unit owner may record a NOTICE OF CONTEST OF LIEN requiring the association to enforce the recorded claim of lien within 90 days

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association) You are notified that the undersigned contests the claim of lien filed by you on , (year), and recorded in Official Records Book at Page , of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this day of , (year).

Signed: (Owner or Attorney)

5. A Notice of DELINQUENT ASSESSMENT must be given at least 30 days (condominium) or 45 days (HOA) before a foreclosure action is filed
  - a. Notice must be delivered or by certified or registered mail
  - b. If brought current before a final judgment of foreclosure, the association shall not recover attorney's fees or costs

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the (type of assessment) assessment to (name of association). The association intends to foreclose the lien and collect the unpaid amount within 30 days of this letter being provided to you.

You owe the interest accruing from (month/year) to the present. As of the date of this letter, the total amount due with interest is \$\_\_\_\_\_. All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses, and telephone numbers of association representative).

- 6. An action to enforce the lien must be commenced within 1 year after the lien is recorded
  - a. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a filed bankruptcy petition
  - b. The lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded plus
    - i. interest,
    - ii. administrative late fees, and
    - iii. all reasonable costs and attorney fees incurred by the association incident to the collection process.
- 7. The enforcement action is the forced sale of the property by the clerk of circuit court.
  - a. A Certificate of Sale is issued to the high bidder who 10 days later receives a Certificate of Title.
  - b. The Certificate of Title transfers the foreclosed party's interests in the property **subject to prior liens, claims or encumbrances such as a bank mortgage or construction lien.**
- 8. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of \$ , hereby waives and releases its lien and right to claim a lien for unpaid assessments through , (year), recorded in the Official Records Book at Page , of the public records of County, Florida, for the following described real property:

UNIT NO. \_\_\_\_ OF (NAME OF CONDOMINIUM), A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK , PAGE , OF THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(Signature of Authorized Agent)      (Signatures of Witnesses)

Sworn to (or affirmed) and subscribed before me this day of , (year), by (name of person making statement).

(Signature of Notary Public)

### III. FLORIDA CONSTRUCTION LIEN LAW

Chapter 713, Florida Statutes, establishes the requirements for placing and enforcing a construction lien on real property. The lien law authorizes those that furnish labor and material to improve real property and those that perform professional services, such as architects, landscape architects, engineers, interior designers, land surveyors and mappers to file a lien as security for payment.

1. The association should record a Notice of Commencement that identifies the name and address of the owner and requires all persons that furnish labor and materials to send a "Notice to Owner".
2. To claim a lien, the general contractor is required to include a "Notice to Owner" in the contract.
3. Any other person is required to deliver a "Notice to Owner" not later than 45 days from the date of first labor, services, or materials delivered to the job site.
4. The association can protect itself from paying twice for improvements to the property by requiring a contractor to furnish releases of lien from all persons that served a "Notice to Owner."
5. If partial payments are made, a partial payment affidavit will certify to the association that all potential lienors have been paid to the extent payments have been made by the association to the contractor.
6. Actual/verbal notice to the owner by a subcontractor is NO substitute for the written notice to owner.

WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL.

UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To (Owner's name and address)

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

(General description of services or materials) for the improvement of the real property identified as (property description) under an order given by .

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF:

—RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

—LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

(Lienor's Signature) (Lienor's Name) (Lienor's Address) Copies to: (Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)

7. The lien must be recorded in the county in which the property is located within 90 days from the date the lienor last furnished consequential work - not minor punch list type repairs.
8. A copy of the Claim of Lien must be served on the owner within 15 days from the date it is recorded.

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared , who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein ), whose address is ; and that in accordance with a contract with , lienor furnished labor, services, or materials consisting of on the following described real property in County, Florida:

(Legal description of real property)

owned by of a total value of \$ , of which there remains unpaid \$ , and furnished the first of the items on , (year), and the last of the items on , (year); and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on , (year), by ; and (if required) that the lienor served copies of the notice on the contractor on , (year), by and on the subcontractor, , on , (year), by .

(Signature)

Sworn to (or affirmed) and subscribed before me this day of , (year), by (name of person making statement).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced

9. Upon receipt of a Claim of Lien, check your records to determine whether a "Notice to Owner" has been furnished to you within 45 days from the date a lienor first furnished labor and material to the project.
10. Thereafter, a lienor must file a lawsuit to foreclose the Claim of Lien within one year from the date it is recorded unless a "Notice of Contest of Lien" is served on the lienor.

11. A "Notice of Contest" shortens the statute of limitations to 60 days after it is recorded.

NOTICE OF CONTEST OF LIEN

To: (Name and address of lienor)

You are notified that the undersigned contests the claim of lien filed by you on , (year) , and recorded in Book , Page , of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of , (year) .

Signed: (Owner or Attorney)

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the notice and record the notice.

12. Do not make final payment until receipt of a "Builder's/Contractor's Affidavit" that releases all lien rights.



**BUILDER'S / CONTRACTOR'S AFFIDAVIT**

**STATE OF FLORIDA**  
**COUNTY OF XXXXXXXX**

\_\_\_\_\_, As \_\_\_\_\_ Of \_\_\_\_\_, being first duly sworn deposes and says as follows:

That he is the Owner/Builder and/or Contractor who constructed or repaired, or caused to be constructed or repaired, the improvements on the property described below, being in Highlands County, State of Florida.

That all charges and costs for labor performed, material furnished and fixtures installed on said premises have been fully paid; that said premises are free and clear of all lienable claims whatsoever arising under and by virtue of said construction.

That no chattel mortgages, conditional sale contracts, security agreements, financing statements, retention of title agreements, or personal property leases have been given or are now outstanding as to any materials, fixtures, appliances, plumbing, heating, lighting and other equipment is fully paid for, including all bills for the repair thereof, except as follows:

That \_\_\_\_\_ Hereby waives and releases (its)(his)/(their) right to file a mechanics' or materialmen's lien against said property.

That said construction was completed on \_\_\_\_\_.

**NOTE:** Where the general contractor is a corporation, the name and signature of the affiant should be that of an officer of the corporation, preferably the President.

\_\_\_\_\_ Owner/Builder Contractor

Subscribed, and sworn to before me on this day of \_\_\_\_\_, 20\_\_\_\_. Notary Public  
My Commission expires:

**FOR USE WITH CORPORATE CONTRACTOR:**

\_\_\_\_\_ A Corporation of the state of Florida, joins in the execution of this instrument for the purpose of adopting all the representations of fact made in the foregoing affidavit and joining in the indemnity agreement therein contained.

NAME OF CORPORATION By \_\_\_\_\_ (Officer)

#### IV. FORECLOSURE LAWS AND CASES

##### **Supreme Court of Florida Issues New Foreclosure Rules**

Amendments to the Florida Rules of Civil Procedure Largely Derived From Recommendations of the Task Force on Residential Mortgage Foreclosure Cases.

Some of the changes are as follows:

**Verification of Mortgage Foreclosure Complaints:** This requires the Plaintiff (lender) to attest to the truthfulness of the allegations in the complaint. It is intended to minimize erroneous filings, conserve judicial resources by reducing the number of cases with "lost note" issues and provide the court with greater authority to sanction lenders that make false allegations.

**Changes the Affidavit of Diligent Search:** When the defendants cannot be served personally, the law allows the foreclosure case to proceed after publication of a notice. This new form requires the person that conducted the search to sign the Affidavit (instead of the lender) and to provide more information about the search.

**New Form - Motion to Cancel and Reschedule Foreclosure Sale:** Associations wait and wait for a lender to foreclose and then wait for the sale to bill the new owner (whether lender or third party) for the appropriate amount. More importantly, Associations need the property to be sold to start collecting assessments from the new owner going forward. The number of sales canceled at the last minute seems to be on the rise. This new form requires the lender to explain why they want to cancel the sale. It also directs the Court to set a new sale date, rather than keeping properties in an "extended limbo between final judgment and sale". [Quote from Task Force]

There are some slight changes to the Final Judgment of Foreclosure that weren't published before so interested persons have sixty (60) days to comment before they become final. All of the other changes are final and in effect.

### **Unit Owners Cannot Refuse to Pay Assessments**

The unit owner's obligation to pay valid assessments is separate from the association's obligation to maintain the property and otherwise fulfill its fiduciary duties.

Case Study: Coral Way owned several condominium units in the 21/22 Condominium. It challenged both the need and the validity of a special assessment levied by the Board of Directors. Coral Way claimed that it had evidence that the association paid for items that were not common expenses. It alleged that the association paid legal fees that were not incurred by the association. It also contended that the financial records did not reflect a lump sum payment made to the association in connection with a roof top lease. This unit owner took the position that a special assessment would not have been necessary and the association would have had the funds to accomplish the repairs identified if it accounted for the income associated with the rooftop lease or spent money for non-association expenses.

1. The 4th District Court of Appeal ruled that the Board's breach of its fiduciary duties does not relieve the owner's obligation to pay legally adopted assessments.
2. A unit owner's duty to pay assessments is conditional solely on whether the unit owner holds title to the condominium unit and whether the assessment conforms to the Declaration of Condominium and By-Laws of the Association

#### **A. Bank is Foreclosing; Association is a Defendant**

Associations are named as defendants in mortgage foreclosure cases because of their power to levy assessments on the titleholder. As defendants, associations have 3 tools to move mortgage foreclosure cases towards a conclusion:

1. Case Management Conference. The judge will call the attorneys on the case into court to ensure that the action is moving toward a final resolution. Your association attorney may ask the judge to set a date for trial (or hearing on summary judgment) or, if the case isn't ready for trial, to set hearing dates on outstanding motions.
2. Pretrial Conference. Once a case has been set for trial, the judge will usually schedule a Pretrial Conference. The judge requires the attorneys to attend in person. The judge may review the pleadings and determine if the parties can agree on facts or documents ahead of time to avoid unnecessary testimony at trial. The association attorney's goal is to drag the bank's attorney into court and get the judge to pay attention to this case. If a party fails to attend

one of these conferences, the court may dismiss the action, strike the pleadings, or take other appropriate actions as punishment.

3. Order to Show Cause. Here the association pushes the owner to show why a final judgment of foreclosure should not be entered. This procedure is intended to give associations standing to move the mortgage foreclosure case to conclusion. If the association wants to file the motion, it would have to know what the owner has paid on the mortgage, the interest calculation, penalties or other fees that may have been charged, and what the final amount for the proposed judgment should be. None of this information is typically available to a junior lienholder unless the bank files it in the court docket, or the association obtains it through discovery.

## **B. Money Judgment as an Alternative to Foreclosure in an Association**

Florida Statutes §718.116, §719.108, and §720.3085 all allow an association to “bring an action in its name to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.” An association may plead both the lien foreclosure and money judgment counts in the same action. The association is entitled to recover its reasonable attorney’s fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

1. Generally, foreclosure is better than a judgment. Lien foreclosure directly threatens a defendant’s ownership interest and, therefore, provides motivation for recalcitrant owners to pay their past due amounts. This is especially true when depriving an owner of the title also threatens an income stream, such as investor owners who rent out their units.
2. Money judgments can be difficult and costly to try to collect, especially from owners who don’t have enough cash to pay off their delinquent balances in the first place.
3. When there is a superior lien (usually a mortgage) that wipes out the association’s assessment lien a money judgment may be the only way to get paid.
4. Homestead property cannot be attached to collect on money judgments.

**C. All Assessments Due Association If A Third Party Purchases A Unit At A Foreclosure Sale**

1. The amount an association is entitled to recover depends on who purchases the unit at the foreclosure auction, the lender or a third party.
2. Chapter 718 provides that any unit owner who takes title to a condominium unit owes all the unpaid assessments due from the prior owner.
3. However, there is one exception. If a first mortgage on the unit is foreclosed, and the holder of the first mortgage takes title, the mortgagee only owes the lesser of twelve months of "regular periodic assessments" or one percent of the original mortgage debt.

### **Condominium Cannot Collect Add-on Charges from Mortgagee after Foreclosure**

*Individualized charges, such as interest, late fees, collection costs and attorney's fees do not fit within the statutory or common sense understanding of "regular periodic assessments"*

The United States District Court for the Southern District of Florida joined a number of other Florida District and Circuit Courts by ruling that add-on charges such as late fees, collection fees, interest and attorney's fees are not collectible from a first mortgagee that obtained title as a result of a foreclosure or deed-in-lieu thereof.

When a first mortgagee forecloses due to non-payment, the bank or financial institution is entitled to a "safe harbor." The law says a first mortgagee only has to pay the lesser of:

1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
2. One percent of the original mortgage debt.

In this particular case, there was both a condominium and a HOA that governed the individual properties that became the subject of the dispute. The first mortgages on both units were backed by the Department of Housing and Urban Development (HUD). When HUD became the owner of both of these properties, it asked for estoppel certificates so the properties could be sold to end-users. The estoppel certificates asked for 300% more than what should have been billed.

The associations argued they were entitled to all the extra fees, costs and charges. It was reported that if the associations revised their estoppels and just charged the "safe harbor" amounts, HUD was likely to pay and then go ahead and sell the properties to end users. Instead, by arguing they were entitled to extra fees, costs and charges the case went to court.

The Federal District Court not only ruled that the extra fees, charges and costs were improper, it ruled that the language of the declaration precluded any payment at all!

The declaration in this case contained a mortgagee protection clause that said (in relevant part):

NON-LIABILITY OF MORTGAGEE OF RECORD: When the mortgagee of a first mortgage of record obtains title to a unit as a result of foreclosure of its first mortgage .... Such acquirer of title ... shall not be liable for the share of common expenses or assessments by the Association pertaining to such unit, or chargeable to the former owner of the unit, which became due prior to the acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure.

The court held that this language precludes the association from collecting anything from HUD for past due assessments. This ruling shows it is more important than ever to amend the governing documents to remove these types of impediments to collecting assessments against banks, homeowners, the U.S. government, investors, etc.

**What Happens After the Association Acquires Title by Foreclosure?**

Case: A small community (65 units) HOA, has foreclosed on 3 units and soon to be 5. All but one have a mortgage and all 4 mortgages are above the value of the property. The banks are not accepting short sale offers without involvement from the mortgagor which in cases is close to impossible. Three of the banks are in foreclosure with the longest process exceeding 3 years. Motions to compel are denied and we are looking for creative ways to speed this process and begin to collect from a new homeowner or at least get my 1%/12.

One attorney's opinion: A motion for case management conference can be a useful tool on behalf of any association involved in a mortgage foreclosure action. In this motion, the association's counsel asks the court to establish reasonable deadlines to bring the case to conclusion, ultimately resulting in a foreclosure sale whereby either the mortgagee or another party will take title to the property. In instances where the association has already foreclosed and taken title to the property, and the mortgagee has filed its own foreclosure, the association may be able to simply consent and stipulate to a judgment and either bring about a sale or transfer of title much sooner. Particularly when the foreclosing party plaintiff is the mortgagee and the defendant owner is the association, and there are no other parties to the action.

What about the 'short sale' option?

The U.S. Treasury announced new federal guidelines that give lenders a 10-day limit in which to respond to short sale purchase offers. These rules may provide much needed relief, as the Sun-Sentinel reported approximately 40% of South Florida homeowners owe more than the property is worth. The rules also provide financial incentives for both sellers and lenders.

Is the Association really entitled to any payment from a first mortgagee when it forecloses its mortgage after the Association has foreclosed its claim of lien?

Remember, the statutes provide for joint and several liability with the previous owner (with the exception of the safe harbor provisions for first mortgagees). Thus, once the Association takes title to a unit or home after completing a lien foreclosure case, it technically becomes liable for the debt of the previous owner and cannot necessarily seek to collect that debt from a subsequent owner, even if the subsequent owner is a mortgagee. Any subsequent owner (mortgagee or otherwise) bears responsibility for payment of all assessments from and after the date title is acquired.

### **Delaying Foreclosure**

The Court can Sanction an Attorney for Delay of Foreclosure

The Fourth District Court of Appeal recently upheld an award of attorney's fees, costs and sanctions against a law firm in an amount over thirty-eight thousand (\$38,000.00) dollars. The Court found Section 57.105, Florida Statutes applied to attorneys representing borrowers in foreclosure cases if 1. actions taken in the lawsuit were shown to be for the primary purpose of delaying the case (allowing the borrower to stay in the home without paying) and 2. the attorney knew or should have known those actions were not supported by the material facts of the case.

In one case the bank filed a foreclosure lawsuit against the borrowers. The borrowers hired an attorney/law firm to represent them in the case. The attorney filed documentation with the Court claiming that the bank violated certain aspects of the Federal Truth in Lending Act. The bank responded with proof it did comply with the Federal Truth in Lending Act, demanding a retraction. After several hearings the judge lost patience and issued an order requiring payment of the bank's attorney's fees, costs and sanctions for the delay. The appellate Court affirmed the ruling.

While this case involved a bank, the same issues often arise in cases filed by condominium or homeowners associations. The Courts are awarding sanctions in favor of community associations when lenders or debtors use the system to delay a case when they know their position doesn't have merit.



### **Foreclosure Aid Program**

Community leaders struggle with budget shortfalls every day. What if there was something you could do when owners fall behind in maintenance payments, mortgages and other expenses? Do you agree that a six month reprieve from mortgage payments can enable homeowners to bring their account with the association current? If so, you need to learn about the financial assistance available.

The state received close to a billion dollars in federal funds to help struggling homeowners fend off foreclosure. The program, administered by the Florida Housing Finance Corp., is designed to provide homeowners with some "breathing room" by giving them a temporary break on mortgage payments. By raising awareness of the program and offering assistance to qualified applicants, community leaders can help improve residents' financial situations while improving the association's financial condition at the same time.

**Eligibility Criteria:** Applicants must be eligible to receive assistance. Help is limited to those Floridians that are unemployed or under-employed, not those suffering financial hardships as a result of divorce, disability or death of one of the borrowers. An applicant ...

- Must be a Florida resident;
- Must occupy property as primary residence (the property cannot be vacant, abandoned or rented);
- Borrower/co-borrower must be unemployed or underemployed through no fault of his/her own, which makes the first mortgage unaffordable;
- Must have documented total household income at or below 140% of the area median income (AMI), adjusted for household size;
- Must have an active checking/savings account that can be debited by the ACH method of funds transfer;
- May not have unencumbered assets of \$5,000 or more, or three times the current monthly mortgage payment (whichever is greater);
- Cannot have a bankruptcy that has not been discharged or dismissed; and
- Cannot have been convicted of a mortgage-related felony in the last 10 years.

### **Can Complaints About Association Operations Become a Defense Against Foreclosure?**

Recently the appellate court overturned a summary judgment ruling in favor of an association. The ruling in *E. Qualcomm Corp. v. Global Commerce Center Association, Inc.* is not final yet.

Qualcom owned a unit in a commercial condominium and stopped paying assessments. One of its defenses to the association's foreclosure included a claim for set-off. The owner alleged that the association's failure to fix the roof led to damages to its property and loss of revenue. The owner claimed it should be entitled to a reduction (or set-off) in the amount owed based on its losses. How many times have you heard something similar?

The appellate court found it was improper to grant a summary judgment for the association in light of these unrefuted allegations. The court said the association should have been required to refute these allegations or to show that the defense was legally insufficient.

### **Injunction Against Master Association that Suspended Use**

A Palm Beach County Circuit Court Judge ruled that the Master Association governing the Quail Run community was not entitled to suspend use of the recreational facilities by all of the owners in one of the condominiums within the community. The Court found that Section 718.303, Florida Statutes did not allow the Master Association to suspend the use rights of the compliant, paying owners, due to delinquencies on the part of a few. Part of the Order says:

"The statute requires that each delinquent member be treated singularly as the Court finds that the statute does not provide that a member who is current in his or her obligations be penalized for payment failure of another member who is delinquent."

### **Suspension of Use Rights and Bankruptcy Protections**

Most community association leaders are familiar with the fact that they have to hold off on collection activities (such as sending further demand letters, filing a lien or prosecuting the association's foreclosure case) when an owner files for bankruptcy protection.

One important protection offered by the bankruptcy law gives the debtor an automatic stay (a 'time out'). Creditors cannot initiate or continue any actions designed to collect the debt included in the bankruptcy petition. The creditor cannot begin or continue action with respect to:

1. lawsuits,
2. efforts to gain control of the debtor's property,
3. perfecting or enforcing a lien, or
4. efforts to set-off the debt.

2010 changes to the condominium and homeowners' association acts gave boards of directors additional enforcement tools, including the right to suspend use of recreational facilities when the owner's debt is more than ninety (90) days past due. The association can suspend use rights by corporate action in compliance with the procedures set forth in the applicable statute, without filing any pleading or lawsuit in court, filing a petition for arbitration with the state or filing a Claim of Lien securing debt.

So, the question becomes: can the association suspend use rights if the owner filed bankruptcy? At least one bankruptcy Court said "no".

An association in Miami suspended an owner's internet service and deactivated the key fob (or other entry device) for recreational amenities at the condominium pursuant to Section 718.303, Florida Statutes. The owner immediately filed an Emergency Motion for Contempt in the bankruptcy court, claiming this action violated the automatic stay. The Court agreed. It held that suspension of privileges to use common areas was "in effect an act of coercion to compel the debtors to pay the past due association assessments". The Court ordered the association to reinstate all privileges forthwith.

The association can participate in the bankruptcy proceeding to ensure the amounts claimed are correct and in some cases ask the court for permission to proceed with collection activities, especially if the debtor does not reside in the property.

## Foreclosure Mediation

The Florida Supreme Court mandated mediation for all circuit court residential mortgage foreclosure cases involving homestead property. The Florida Supreme Court initiated a task force review of foreclosure cases in 2009 and the findings were not surprising, at least not to community association board members dealing with delinquencies. The task force recommended mediation to manage "the massive volume of residential mortgage foreclosure cases".

Mediation increases costs for the mortgagee (at least \$750 for the program plus attorney's fees), delays the process and may actually work against the borrower that participates in the program in the long run.

First, the program coordinator must contact the borrower. The borrowers typically don't respond, so a second notice is sent and sometimes even a third notice is sent. That all takes time. Once contact is established the borrower must meet with an approved mortgage foreclosure counselor, that takes more time. Then the borrower must assemble and provide certain financial information to the mediation program coordinator before mediation will be scheduled.

"Pro-se" borrowers (borrowers without legal counsel) often are not aware they may request documents from the mortgagee, such as:

- Evidence it owns and holds the note and mortgage sued upon;
- An account history showing the application of all payments by the borrower during the life of the loan;
- The mortgagee's determination of present net value of the mortgage loan; and
- The most current appraisal of the property.

A reporter for the Palm Beach Post found foreclosure mediation only had a 6% success rate. The article quotes a report indicating program coordinators established contact with less than half of the borrowers that qualified for the program. Less than half of those borrowers actually participated in mediation. All of this must take place before the Court will act on any notice for trial, motion for default final judgment, or motion for summary judgment filed in the case.

Fannie Mae recently announced its plan for pre-litigation mediation in Florida. Fannie Mae requires mortgage servicers to refer delinquent mortgage loans to one of its approved attorneys along with contact information for a primary liaison/team that can make decisions regarding loan modifications or other avenues for resolution of the delinquency. If the circumstances meet Fannie Mae's mediation requirements, the servicer must offer mediation to the borrower. It can fine servicers for failing to comply with the program.

### **Forcing the Bank to Foreclose**

Almost every association has been through it. A deadbeat unit owner has stopped paying their mortgage and the lender brings a foreclosure action against them to enforce the note and mortgage. Not surprisingly, this same owner stops paying his maintenance fees to the association and the association finds itself stuck between a rock and a hard place: bring its own foreclosure action and attempt to obtain title, knowing that ultimately the lender will recapture this title from association as a superior lien holder, or wait for the bank to finish its foreclosure action and hope the new owner begins to pay all future maintenance fees.

For those associations opting for the latter option, a great deal of frustration arises when they see just how long it takes for the average bank foreclosure lawsuit to reach its resolution. While under the Tadmire decision an association can no longer force a lender to pay monthly maintenance fees while its case is pending, since they are not the "legal" owner of the property, all hope is not lost.

Associations have rights when mortgagees foreclose. Don't let these mortgage foreclosures drag on and on and on ....

Ask for a Case Management Conference. This gives the association's attorney the opportunity to request hard deadlines in the case. Judges can enter Orders requiring summary judgment motions filed and hearings set within a short period of time, generally 30 days or less. Summary judgment is key because once this is granted, the case is essentially over and all that is left to be done is to sell the property.

With the order on the case management conference in hand, the association now has a powerful tool in its arsenal that can only lead to positive results. If the lender's attorney complies with the order, the final judgment clears the way for the property to be sold. If not, the door is wide open for the association to seek and recover sanctions against the lender for the delay.

Bank attorneys are often unable (or possibly unwilling?) to comply with scheduling orders. Judges hate when parties do not follow their orders and are often very quick to sanction or fine those plaintiffs. Sanctions can range from a one-time lump sum payment all the way up to daily fines that accrue every day until they take action. In short, associations can finally have the upper hand when a bank drags its feet in violation of a court order.

This is crucial - if an association finds itself in a situation where a lender's case is in a standstill, set a case management conference as soon as possible. It is important to authorize counsel to act fast once the initial case management conference order deadline expires. Judges around the state are becoming more sympathetic to associations that get caught in the middle of lender foreclosure cases that go on forever.

### **Association Victory in Mortgage Foreclosure**

#### **LR5A-JV v. Little House LLC, Fifth District Court of Appeal, Case No. 5D09-3857**

The lender named Matanzas Shores as a defendant in order to foreclose the Association's liens. The Association's lien is subordinate to a first mortgage. The Court entered Final Judgment of foreclosure against the property in 2008.

The Association didn't want to wait around for lender to act - so its counsel filed a Motion to Schedule the Sale. The lender objected - claiming it was entitled to set the sale and if it wanted to wait that was its choice. This is the issue that went up on appeal.

The Association argued:

1. The Court has the authority to schedule the sale pursuant to §45.031, Florida Statutes;
2. Since foreclosure cases involve the equity jurisdiction of the Court, the Court should consider the interests of all of the parties to the case when setting the sale date; and
3. Since the Supreme Court's Task Force on Residential Foreclosures recognized that Associations suffer when foreclosures take longer than they should, the Court can and should facilitate prompt resolution of these cases when possible.

The Lender objected - still claiming it, as the plaintiff in the case, had control over the process. The Lender also argued that even if the Court did have authority to schedule the sale, doing so at the Association's request was an abuse of discretion. The Appellate Court completely rejected the lender's arguments.

The Task Force report prompted the Supreme Court of Florida to Issue New Foreclosure Rules. One of those rules created a new procedure and form for use to change the sale date initially set by the clerk. This new form is called the Motion to Cancel and Reschedule Foreclosure Sale. Associations need the property to be sold to start collecting assessments from the new owner going forward. This new form requires the lender to explain why it wants to cancel the sale. It also directs the Court to set a new sale date, rather than keeping properties in an "extended limbo between final judgment and sale". [Quote from Task Force]

### What Will the Lender Pay?

Counsel for the Association fears that the dispute between the lender and the Association is far from over. The statutes require the lender to pay assessments upon acquisition of title. Well, here the Court said that the sale should have taken place in 2008. Should the Association be penalized for the gap between the initial sale date and the date the sale actually occurs? Should the lender pay assessments for the two plus years it took to appeal? We may hear more about this case in the future.

This ruling brings welcome relief to many Associations throughout the state. If your community is waiting for the Court to re-schedule a sale or waiting for a lender to ask the Court to schedule a sale, wait no longer. Speak to your counsel about filing a Motion to Set the Sale. Along those lines, if your community is waiting for a lender to set its summary judgment hearing or re-schedule its summary judgment hearing - speak to counsel. You have options to push these cases to conclusion - take advantage of them!

### **Adverse Possession**

Squatters Occupying Abandoned Homes May Have Claim Against Owners While Authorities Charge Adverse Possession Filers With Fraud.

A company called Helping Hands Properties, Inc. claimed 48 properties in Broward, including a \$1 million house in Coral Springs. Another, Saving Florida Homes, Inc. filed notice in official county records that it was taking possession of 100 homes in Broward and three in Palm Beach County - up to 10 properties were claimed in just one day. The company owners say that taking possession of dilapidated properties improve the neighborhood. Authorities say they are just trespassing and stealing. Are these companies just manipulating the system for their own benefit or are they performing a public service? What can you do if this happens in your neighborhood?

Adverse Possession - What is it?

Florida statutes address adverse possession - a process to obtain title without buying a property. To acquire title by adverse possession, such possession must be adverse, hostile, open or notorious, exclusive and uninterrupted, for seven years.

There are two types of adverse possession. Adverse possession under "color of law" (§95.16, Florida Statutes) means the possessor's ownership claim is based upon a written document in the county public records. Adverse possession without "color of law" (§95.18, Florida Statutes) means there is no recorded document purportedly creating ownership.

To claim adverse possession under color of law, the document (deed, etc.) does not have to be valid. However, the possessor must have accepted the instrument in the honest belief that it conveyed ownership. Possession means that the property has actually been used or enclosed.

Adverse possession without color of law is not based on any recorded document, but mere use of the property is not enough to claim ownership or entitlement. The possessor must pay the property taxes and installments of all special improvement liens levied against the property by the state, county and city. The additional requirement of tax payments not only evidences the possessor claims ownership, but places the record owner on notice that property taxes are being paid by someone else. That gives the record owner an opportunity to investigate and take action.

Remember - possession must be open, notorious and hostile to claim adverse possession. Permissive use, like when you allow kids to play soccer, use motorbikes or camp on the property, means the possession is not adverse.

In a New York Times article, one of the company owners explained he allowed tenants to fix up the property instead of paying rent. Strategic defaults create plenty of opportunities to seize abandoned homes. Letters sent to property owners and banks notifying them of the plan to take over the home were reportedly ignored. He now faces up to 15 years in prison.

This tactic can pose problems for community associations. More and more community associations have acquired title to homes as a result of foreclosures. Those associations must monitor the use of the property and file eviction actions to remove unauthorized occupants to avoid claims of adverse possession. The same is true for bank-owned properties. A lender may not be aware of the actual use or condition of the home, especially if its not actively marketed for sale. The association needs to remain cognizant of the actual use and take action to verify whether that use complies with the governing documents. Ignoring use violations creates even further problems, especially when the association tries to take action much, much later.



**SAFE HARBOR PROVISION**

The Safe Harbor provision (Fla Stat. 718.116(1)(b)) is a Florida specific legal creation that provides guidance when collecting past due Condominium assessments after a mortgage foreclosure has been completed. The provision limits the liability of the foreclosing party as long as they take title at the foreclosure auction. The Association used to be restricted to recovering the lesser of 1% of the original mortgage or 6 months of assessments, plus whatever assessments and costs accrued after the foreclosing party took title.

The "safe harbor" of § 718.116 places a cap on the liability for the unpaid assessments due prior to the foreclosure. The cap only applies to the first mortgagee and the first mortgagee (or first lender) may actually be defined in the condominium declarations. In most foreclosures, there is one mortgage on the property. If the mortgagee acquires title to the condominium through foreclosure, it will be responsible for 12 months of unpaid common expenses or 1% of the original mortgage debt, whichever is less. The "safe harbor" amount must be paid by the mortgagee within thirty (30) days of the issuance of the certificate of title. Thereafter, the first mortgagee who takes title by foreclosure is now the record title owner of the condominium unit and is responsible for all condominium assessments *on a going forward* basis.

However, if another individual or entity acquires title to the condominium unit, that new third party will be responsible for the entire balance of the unpaid assessments before the foreclosure went into effect. See § 718.116, Florida Statutes. Regardless of who takes title, the condominium association, through its retained counsel should immediately make a demand for the "safe harbor" or the entire amount of the assessments after it knows who took the property at the sale.

### **Homeowners' Associations**

Section 720.303(6), Florida Statutes, part of the Florida Homeowners' Association Act, has been amended regarding budgets and reserves, but those changes likewise impact the year-end financial reports. The 2010 changes distinguish between "statutory" and "non-statutory" reserves. There are different disclosures required, depending on the type of reserves established.

HOAs that do not include "statutory" reserve schedules and funding for those reserves in their annual budgets must include the following disclosure in the year-end financial statements:

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.

HOAs that include "non-statutory" reserve funding in their annual budgets must include the following disclosure in the year-end financial statements:

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.

### **The Foreclosure Decision**

In nearly every case where a first mortgage of record exists on a property, the association's lien is subordinate or inferior to that mortgage. This means if an association elects to foreclose its lien and takes title to the property, it will take title subject to the right of the first mortgagee to foreclose its mortgage. Associations in the past were reluctant to foreclose when the mortgagee already commenced its own foreclosure action or when the value of the property did not exceed the amount of debt secured by the first mortgage. That's changing now.

Associations are now making the decision to foreclose more often under these circumstances. The primary reason for this is serious delay in the prosecution of the mortgagee's foreclosure case. These delays are brought on by a variety of factors including the sheer volume of cases handled by the mortgagee's law firm, protracted efforts to work with the borrower either to short sale the property or modify the loan, problems associated with serving necessary parties with the foreclosure complaint or locating original documents that are to be filed with the court, back log in the courts and even strategic decisions by mortgagees to slow down the process.

In some cases, associations can obtain favorable results when foreclosing, even against properties that have fair market values below their mortgaged amount. Sometimes the homeowner has the means to pay the association but has elected to spend money on other concerns. Because foreclosure results in the owner losing title to the property, if the owner has the means to pay and does not desire to walk away, they pay rather than lose title. Foreclosure can be a powerful deterrent for owners who have the means to pay but elect not to or to pay late because they hear others doing the same. Another option is the association's right to rent the property once it takes title, if permitted by the association's governing documents. For some associations, the rental market is favorable and significant income can be recovered before the mortgagee forecloses and takes title.

Many times the owner cannot or will not pay and rental is not a viable option. However, associations still make the decision to foreclose for any number of reasons. Because so many mortgage foreclosures are being contested by owners raising defenses unique to the mortgage foreclosure action, and thus stalling the mortgage foreclosure case for months or even years, the association can effectively render those defenses moot as they relate to the mortgagee's foreclosure by foreclosing the association's lien. When the owner is divested of title by the association, the owner will drop or lose the fight against the lender in the mortgage foreclosure action, thus paving the way for the lender to take title and begin paying assessments.

Another option for associations taking title is negotiating a short sale with the lender or tendering a deed in lieu of foreclosure to the lender. I have also filed motions in mortgage foreclosure actions notifying the court that the association has taken title and does not contest the mortgagee's foreclosure, therefore, speeding up the lender's acquisition of title. These associations understand the key is getting a paying owner into the property sooner rather than later. That way, more in terms of future assessments are recovered rather than lost while a mortgage foreclosure lingers on for years and no one pays the assessments.

Each case is different and the association is well served if it carefully considers all of its options and selects a strategy that works best in any given case. In this ever changing environment, there is no one size fits all approach.

### **Associations Facing Mortgage Foreclosures Head On**

In the wake of Attorney General investigations, self-imposed lender moratoriums on foreclosures and a mounting back up of pending mortgage foreclosure cases, community associations are searching for alternatives to waiting out the storm. It was once the norm that associations would take a wait and see approach when an owner delinquent in the payment of assessments was also facing a mortgage foreclosure. Particularly, in this economy when the amount due on the mortgage exceeds the fair market value of the property. However, now it is too often that associations are left withering on the vine while the mortgage foreclosure action goes on for months or even years.

The delay in these mortgage foreclosure actions can be the product of many problems faced by the lender, such as difficulty in proving it holds the original note and mortgage, lost assignments of mortgage (which are not always recorded and not required by law to be recorded to be effective), or the sheer volume of pending cases slowing down the prosecution by the lenders' counsel. Additionally, owners often raise any number of defenses to slow the prosecution so they can stay in their homes longer. In a judicial foreclosure state like Florida, delay can be significant.

Many owners are also exploring loan modification possibilities with the lenders. These programs generally begin with a trial period before the lender will agree to modify the loan and can take several months to evaluate. Meanwhile, delinquent assessments continue to accrue.

When the mortgage foreclosure is concluded and the first mortgagee takes title, it is generally only obligated to pay a limited amount of unpaid assessments incurred by the previous owner. Most associations are no longer willing to idly sit back and wait for this process to unfold and are taking measures to conclude the litigation sooner rather than later.

The most commonly used mechanism for advancing a mortgage foreclosure is noticing the case for a case management conference. The Florida Rules of Civil Procedure provide that any party to litigation can call for a case management conference before the court. The purpose of the case management conference is for the court to establish a schedule for certain events to occur so the litigation can be concluded within defined time frame. Even though lenders may want to place their foreclosures on hold while they conduct further investigation into their own internal procedures, or to explore legitimate loan modification opportunities with the borrower, the court can require deadlines to progress the case in a reasonable fashion.

Another very difficult problem facing associations is post judgment foreclosure sale cancellations by the lenders. Most sales are cancelled so the lender can explore a loan modification with the borrower. However, the Florida Supreme Court has recognized abuses in the foreclosure sale procedure and has issued form orders for lenders to use when cancelling the sale. Essentially, the Court has said the lender should file a motion to cancel the sale and simultaneously move to reschedule it within a reasonable time. The problem the Court has recognized is that these foreclosure cases cannot indefinitely sit in limbo between final judgment and sale. Associations should authorize counsel to file motions to reschedule foreclosure sales when appropriate to do so, that is when the lender has not moved to reschedule the sale and establish a timeframe to bring the matter to conclusion and transferring title to a new owner.

### **Compensation by Cable Operators for Exclusive Marketing Rights**

Some associations have been approached by cable operators with a request for an exclusive access agreement or marketing agreement. Many times these are exclusive agreements, although in my recent experience the provider has limited the exclusivity portions to on-site marketing to residents. Many times these agreements contain references to voice, video and data services or simply broadband services, without a specific explanation of what those services entail. Other types of service providers are also offering community associations, especially large community associations, lump-sum "loyalty" payments in connection with a renewal or extension of the contract. The association may be very happy with the upfront lump-sum payment.

The money isn't free - there are corresponding obligations of the association in these agreements which, if violated or not performed, subject the association to liability for damages.

Considerations:

1. **Term/Length of Agreement:** Will this technology change? Will your community be stuck with a provider for what seems like forever when dozens of new companies have entered the market and those have better services for better prices?
2. **Easement vs. License:** An easement is generally a non-revocable interest in land - it is a valuable property right. A license, on the other hand, is revocable and allows use without conveyance of property rights. Does your community have the authority to grant an easement? Over what property exactly?
3. **Exclusivity:** The association is prohibited by law from entering into certain kinds of exclusive contracts.
4. **Marketing Rights:** What exactly does the Association have to do to comply? Does it have to distribute flyers door-to-door by hand? Who's going to do that? Do you have to allow the company to go door-to-door? What about your non-solicitation rules? What about your security?
5. **Prohibit Unauthorized Use:** Most of the bulk-contracts contain a provision requiring the association to prohibit unauthorized use of the service. Let's take cable for example - is the association going to inspect each unit or home and turn on every t.v. to determine whether the resident has access to channels outside his/her subscription agreement? Is the association even permitted to undertake this action?

### **Judgments Against Bank-Foreclosed Owners**

Bank foreclosures continue to be an impediment to collection of unpaid assessments in many communities. Although community associations are entitled to collect either 1% of the original mortgage debt or 12 months' worth of assessments from the mortgagee (whichever is less), that will probably not cover the entire indebtedness.

A unit owner is personally liable for all unpaid assessments. The Association may seek to collect the balance on the account from the former owner. More and more, people who do have assets make choices to abandon properties because there is no equity. If there is a possibility that an owner has assets to satisfy a judgment, a community could take action against a former member to collect those unpaid assessments.

If the association doesn't have a lawsuit pending, it needs to file a lawsuit. There are attorney's fees, filing fees, costs associated with service of process, etc. If the association already has its lawsuit pending, most of those costs have already been absorbed. The association could wait for the bank to foreclose, collect the bank's statutory obligation, and then continue to pursue the balance against the former owner. A judgment is recorded in the county and with the State's registry; it is initially valid for 10 years and can be renewed for another 10 years. During that time if the debtor desires to buy another property, obtain financing for purchase of a vehicle, college, etc., the judgment will appear.

While the debtor/former owner may not have sufficient cash-flow right now, they may in the future. If the debtor has significant assets in another state, the association can even take the extra step of domesticating the judgment in another state and pursue collection efforts there.

### **Tax Assessment Protest**

Now may be the time to establish a lower base assessment for yourselves and your owners. How? Pursuant to Section 194.011(3), Florida Statutes, condominium, cooperative and homeowners associations can file a joint petition. The relevant portion of the statute says:

A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

Once the Board of Directors passes a resolution it may file the tax appeal petition with the Value Adjustment Board. The Value Adjustment Board will appoint a Special Magistrate to conduct a hearing to determine whether the market value of the property set forth on the TRIM notice was higher than the actual market value on January 1 of this year.

The collective power of the association is useful in the appeals process. First, the per property fee for filing is less. The fee may be paid by the Association, in fact §718.111(3), Florida Statutes and §720.303(1), Florida Statutes specifically authorizes the association to protest ad valorem taxes for the common facilities. The common elements and facilities are nominally valued for tax purposes, since the actual value is included in the value of the homes/units.

Factors to Consider in a Protest:

- Part of the property may qualify for an exemption
- Foreclosure & delinquency rates
- Structural or storm damage / construction work limiting use of the property
- Changes in the surrounding area i.e. blocked views from new construction
- Increased property insurance costs
- Changes in use - chinese drywall & other limitations on use

Each unit or home owner is given the opportunity to opt-out of the appeal if they want to pursue an appeal on their own or don't want to participate. Use professionals to assist in the tax appeal process.



## **Lenders Cannot Ignore Foreclosure Cases With Impunity**

### **From the Manatee Observer**

Action on the part of a community association can achieve good results in bank foreclosure cases. The Bank of New York was recently ordered to pay a condominium association over Thirteen Thousand (\$13,000) Dollars in sanctions, representing assessments that accrued during the stalled foreclosure case.

In the most recent case, a Florida attorney filed a Motion to Compel after six (6) months of little or no activity in a bank foreclosure case. The Court granted the Motion and entered an Order requiring the bank to proceed. Later on the Court found that the bank did not show 'good cause' why it disobeyed the earlier ruling. The association incurred attorney's fees and costs for attendance at hearings, writing several letters demanding compliance and additional motions, including the Motion for Contempt - all sent without any response from the bank or its counsel. It took almost four (4) months for the bank's attorney to acknowledge the motions, letters and rulings. Another three (3) months went by before the bank filed any responses with the Court.

The responses were apparently too little too late. The Court granted the association's Motion for Contempt and awarded attorney's fees to the association.

## **Court Rules HOA Cannot Turn Off Water**

An association in Hillsborough County amended its documents to ostensibly allow it to take these actions if any of the homeowners failed to pay assessments. HOA's have the authority to suspend use of common areas and facilities if the governing documents contain appropriate language.

The Court found that the association went too far and ordered the association to restore water service to the townhome of the delinquent owner.

Many communities are struggling to make ends meet. If water/sewer is paid for as a common expense because there is only one meter, it may be advisable to investigate whether sub-metering is an option. Of course, there are legal issues that need to be addressed and therefore please consult with your community association attorney before making any changes to the property or utility services.

**Q&A: Condominium and Homeowners Association Bankruptcy  
From Bankruptcy Attorney Aleida Martinez Molina**

The Maison Grande and other bankruptcy filings by community associations have spurred interest in reorganization of debt. Is bankruptcy an option for your cash strapped community? What issues do you need to consider? Bankruptcy Attorney Aleida Martinez Molina answers the following questions for community associations struggling with bills and bad debt.

**CAN CONDOMINIUM OR HOMEOWNERS ASSOCIATIONS FILE FOR BANKRUPTCY?** Yes. Under certain circumstances, condominium associations have successfully reorganized under Chapter 11 of title 11 of the United States Code, 11 U.S.C. sections 101, et seq. ("Chapter 11" and "the Code," respectively). This phenomenon is not unique to Florida – there have been successful condominium association reorganizations throughout the United States.

**WHAT IS A BANKRUPTCY IN THE CONTEXT OF A COMMUNITY ASSOCIATION?** The first point to understand is that Chapter 11 is a reorganization process – not liquidation under Chapter 7 of the Code. As such, it can provide associations the protections of the automatic stay and other relevant Code provisions while allowing them to formulate a plan of reorganization to extricate themselves from the particular financial situation.

**UNDER WHAT CIRCUMSTANCES DOES IT MAKE SENSE TO REORGANIZE?** The Code has unique provisions which in essence give associations a more level playing field to negotiate with creditors. A number of associations find themselves with daunting contracts or leases which they might renegotiate or simply reject if able to do so. A reorganization could, under the appropriate circumstances, accomplish this goal. Another example is filing for bankruptcy protection in order to prevent a judgment creditor from seizing or garnishing bank accounts. An association with a judgment or upcoming trial could turn to a reorganization as a way to automatically stay the lawsuit/collection of the judgment and permit a realistic settlement. Finally, associations finding themselves threatened with the shut-off of service by utilities or other providers can, under certain circumstances, resort to reorganizations to temporarily prevent this drastic action.

**WHAT IS REQUIRED FOR AN ASSOCIATION TO REORGANIZE?** Proper authority from the Board and appropriate attorney fees and costs. In addition, an association should file a reorganization with a clear understanding of its exit strategy (i.e., a plan of reorganization).

**COSTS ASSOCIATED WITH A REORGANIZATION:** Reorganizations are not inexpensive and simple matters – filing fees to the bankruptcy court alone exceed \$1,000. The debtors also need to pay quarterly fees to the United States Trustee while the reorganization is pending. Any debtor (association or otherwise) needs to contact competent counsel in time to prepare budgets and plan accordingly. It can and is done – even in dire situations where utility services are about to be interrupted. Counsel can advise how to properly prepare the necessary documents, authority and budget to reorganize under the Code.

WHAT HAPPENS TO ASSOCIATION RESIDENTS WHEN A COMMUNITY ASSOCIATION REORGANIZES? Ideally, nothing directly. If the association files with appropriate board authority and a reasonable game plan, the association should be able to function and provide the necessary services to the association property and residents.

### **CDD Defaults More Prevalent; Understand Community Development District Operations**

#### **Developers Often Use Community Development Districts (CDD) to Fund Community Infrastructure and Amenities.**

Newspapers are filled with advertisements for homes in neighborhoods that have wonderful community amenities. The streets are lined with sidewalks, beautiful trees tower above medians, there are neighborhood parks and tot-lots, lakes, maybe even a clubhouse with an exercise facility and meeting rooms. At the sales office you learn that these facilities are solely for the use of the owners within the community. It is not unreasonable to think that all of these features were built by the developer, at its expense, in order to justify the price of the homes and to encourage sales.

Well, the latter may be true, but if the property is located within a Community Development District purchasing a home is likely to include a long-term obligation to fund the initial construction of those amenities.

Community Development Districts (CDD) are not new in Florida but use of this mechanism to fund infrastructure and recreational amenities has increased exponentially in recent times. A CDD is a special-purpose unit created primarily for the purpose of financing and then operating and maintaining community-wide improvements in new communities. A landowner (usually a developer) petitions the local government to create a CDD with broad powers that enables the CDD to generate revenue. Bonds are typically issued and payable by the land-owners (purchasers of homes and other properties) in the district over a period of time - up to thirty (30) years. Additional revenue is generated through special assessments and other fees paid by the property owners in the district.

It is not unusual for a developer, through the use of a CDD, to fund development and construction of the roads, the surface water management systems, parks, clubhouses and other community facilities such as entry features and the like with the initial lump-sum of revenue obtained from the issuance of bonds. The CDD maintains, operates and administers the property and improvements subject to its control and establishes the fees or other financial obligations of the land owners.

Chapter 190, Florida Statutes became effective in 1980, but CDD's were not very popular in the early years. Approximately 100 CDDs were created in Florida during the 1990s and then over 200 new CDDs came into existence between 2000 and 2005. There are currently close to 600 CDDs active in Florida at the present time according to the website maintained by the Department of Community Affairs.

While the Board of Supervisors for each CDD is elected by the landowners, the exercise of the powers and duties of the district, as well as the use of revenue produced by the special assessments and fees, has often come into question. The developer of the Cory Lake Isles community in Hillsborough County reportedly controlled CDD operations for 18 years. Residents complained that the developer mismanaged the district's finances and spent CDD money on the developer's personal projects. When CDD meetings became tumultuous, it hired off-duty police officers to keep the peace, as a CDD expense. Residents in Cory Lakes have had to pay higher fees, but now have control of the District.

Defaults associated with CDDs have increased, presumably as a result of the downturn in the housing market. An Orlando based Firm indicated that more than 10% of the CDDs in Florida did not fulfill their obligations. Defaults may mean even more of the costs will be passed on to homeowners.

# CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

## **How to Effectively Deal with Residents and Vendors**

**Human Resources Topic (HR)**

*Individual Course ID No: 9629898*



# *Introduction*

The Florida community association management industry continues to experience dramatic changes in the marketplace and in the regulatory realm. This course examines methods to effectively communicate with residents and vendors, topics that affect all community associations and, therefore, all community association managers.

## **Learning objectives:**

### **How to Effectively Deal with Residents and Vendors:**

Upon completion of this course, students should be able to:

- identify negotiating opportunities when dealing with residents and vendors
- understand the student's personal negotiating profile
- list 5 negotiating styles and the important characteristics of each
- describe the 2 alternative types of negotiations
- explain conditions under which a negotiation may be impacted by unrealistic expectations
- list the conditions under which a negotiation may escalate into a conflict
- describe 'anchors' and how they are used when negotiating a contract
- explain the application of 'framing' in a negotiation
- identify social styles and how negotiating styles should match
- understand how to combat subjective tendencies
- list the 3 steps to a 'win-win' negotiation
- identify steps to take to prepare for a disaster
- list at least 4 sources of information for disaster preparedness

## Successful Communication Skills

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In this course, we will discover your negotiation profile. Then we will cover strategies for expanding agreement opportunities no matter the perceived obstacles. You'll see how top negotiators bypass common tactics and arguments by utilizing a "Win-Win" approach. Your reputation as a tough-but-fair negotiator will, in turn, create more business opportunities.

## Keys to Effective Negotiation

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Our focus groups say that the following are the keys to effective negotiation:

1. If you find yourself in a leveraged position, or otherwise don't have to, do not negotiate.
2. Decide when to reveal your true position.
3. The party revealing the first number usually loses.
4. When in negotiation and asked a question, which has an undesirable answer, respond with a question.
5. When in doubt, ask a question, as the questioner controls the conversation.

## Negotiation Profile

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Though you may not view yourself as a negotiator, you probably have lots of experience. Most of us negotiate personal needs with others on a regular basis. The outcomes for those negotiations are based largely upon your who you are as a negotiator.

Our SuperStar Agent focus group said that three contrasts would reveal your negotiation style – your beliefs about:

- Substance vs. Relationship
- Assertive vs. Responsive
- Rapport vs. Boundaries

**WORKSHOP: Evaluate your Negotiation Profile for all three categories.****Substance vs. Relationship**

<b>DIRECTIONS:</b> For each statement, circle the number that most accurately reflects the extent to which that statement is descriptive of you and your thinking. Remember to be candid in your responses.	<u>Disagree</u>	<u>Agree</u>
1. When I negotiate, my interests must prevail.	1	2 3 4 5 6 7
2. I try to reach a result based on objective criteria rather than just my demands.	1	2 3 4 5 6 7
3. I put aside unpleasant confrontations in favour of a friendly approach.	1	2 3 4 5 6 7
4. Negotiators are adversaries.	1	2 3 4 5 6 7
5. I try to identify shared principles to use as a basis for resolving negotiating dilemmas.	1	2 3 4 5 6 7
6. I often feel I lack the power to produce a successful outcome.	1	2 3 4 5 6 7
7. I enjoy the reputation of tough battler.	1	2 3 4 5 6 7
8. Negotiation may be said to be effective when both parties get their needs satisfied.	1	2 3 4 5 6 7
9. Half a loaf is better than none.	1	2 3 4 5 6 7
10. Negotiation is a contest of wills.	1	2 3 4 5 6 7
11. You have to make concessions to the other party to build the relationship.	1	2 3 4 5 6 7
12. Realistically, you can only get what others are willing to concede.	1	2 3 4 5 6 7
13. You should do unto others before they do it to you.	1	2 3 4 5 6 7
14. Affable relationships produce the best results.	1	2 3 4 5 6 7
15. Compromise is the essence of effective negotiating.	1	2 3 4 5 6 7
16. An effective negotiator employs threats, bluffs, surprises.	1	2 3 4 5 6 7
17. I keep a low profile during a negotiating discussion.	1	2 3 4 5 6 7
18. Split the difference is my motto.	1	2 3 4 5 6 7
19. Effective negotiators develop a partnership.	1	2 3 4 5 6 7
20. A soft word can win a hard heart.	1	2 3 4 5 6 7
21. By playing down certain hot issues one can reduce or eliminate time consuming conflicts.	1	2 3 4 5 6 7
22. When negotiating, I attempt to work through our differences.	1	2 3 4 5 6 7
23. I search for a solution the other party will accept.	1	2 3 4 5 6 7
24. My approach is always to meet the other party half way.	1	2 3 4 5 6 7
25. The most successful negotiation makes everyone a winner.	1	2 3 4 5 6 7
26. I often let others take responsibility for solving the problem.	1	2 3 4 5 6 7
27. When I negotiate, I put a lot of effort into looking for trade-offs so each party gets something out of the deal.	1	2 3 4 5 6 7
28. People with whom I negotiate know me as a friendly peacemaker.	1	2 3 4 5 6 7
29. I put aside decisions until conflicts have quieted down.	1	2 3 4 5 6 7
30. In a successful negotiation everyone gives something but everyone also gains something.	1	2 3 4 5 6 7



**Individual Exercise—Scoring Key:**

Directions: The 30 statements in the survey have been set up in five columns in the chart below. Transfer the number of the response given to each statement, to the appropriate space on the chart. Add up the total number of points in each column and enter the total in the space provided.

Question Number:

1___	2___	3___	6___	9___
4___	5___	11___	12___	15___
7___	8___	14___	17___	18___
10___	19___	20___	21___	24___
13___	22___	23___	26___	27___
16___	25___	28___	29___	30___
TOTAL: A___ B___ C___ D___ E___				

A = Defeat  
 B = Collaborate  
 C = Accommodate  
 D = Withdraw  
 E = Compromise

## **Substance vs. Relationship**

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**SUBSTANCE** = **task** to be accomplished

**RELATIONSHIP** = **balance** of emotion and reason

**Defeat: High substance - Low relationship**

Win-lose competition; pressure, intimidation, adversarial relationships. The negotiator is attempting to get as much as possible. Defeat the other party - perhaps a one shot deal.

**Collaborate: High substance - High relationship**

Searching for common interests with the other party; problem solving behavior; recognizing that both parties must get their needs satisfied for the outcome to be entirely successful. Collaborative behavior and a Win-Win outcome.

**Accommodate: Low substance - High relationship**

Focuses on harmony and avoidance of substantive differences; yields to pressure to preserve the relationship; places interpersonal relationships above the outcome

**Withdraw: Low substance - Low relationship**

Feelings of powerlessness, indifference, resignations, surrender; taking whatever the other party concedes.

**Compromise: Moderate substance - Moderate relationship**

Compromise, meeting halfway, looking for tradeoffs; conflict resolution.

## Negotiating Profile

**DIRECTIONS:** For each statement, circle the number that most accurately reflects the extent to which that statement is descriptive of you or your thinking. Remember to be candid in your responses.

	<u>Disagree</u>					<u>Agree</u>
1. When I negotiate, my interests must prevail.....	1	2	3	4	5	6 7
2. I try to reach a result based on objective criteria rather than just my demand.....	1	2	3	4	5	6 7
3. I put aside unpleasant confrontations in favor of a friendly approach.....	1	2	3	4	5	6 7
4. Negotiators are adversaries.....	1	2	3	4	5	6 7
5. I try to identify shared principles to use as a basis for resolving negotiating dilemmas....	1	2	3	4	5	6 7
6. I often feel I lack the power to produce a successful outcome.....	1	2	3	4	5	6 7
7. I enjoy the reputation of being a tough battler.....	1	2	3	4	5	6 7
8. Negotiations may be said to be effective when both parties get their needs satisfied.....	1	2	3	4	5	6 7
9. Half a loaf is better than none.....	1	2	3	4	5	6 7
10. Negotiation is a contest of wills.....	1	2	3	4	5	6 7
11. You have to make concessions to help the other party to build the relationship.....	1	2	3	4	5	6 7
12. Realistically, you can only get what others are willing to concede.....	1	2	3	4	5	6 7
13. You should do unto others before they do it to you.....	1	2	3	4	5	6 7
14. Affable relationships produce best results.....	1	2	3	4	5	6 7
15. Compromise is the essence of effective negotiating.....	1	2	3	4	5	6 7
16. An effective negotiator employs threats, bluffs and surprises.....	1	2	3	4	5	6 7
17. I keep a low profile during a negotiating discussion.....	1	2	3	4	5	6 7
18. Split the difference is my motto.....	1	2	3	4	5	6 7
19. Effective negotiators develop a partnership.....	1	2	3	4	5	6 7
20. A soft word can win a hard heart.....	1	2	3	4	5	6 7
21. By playing down certain hot issues, one can reduce or eliminate time consuming conflicts.....	1	2	3	4	5	6 7
22. When negotiating, I attempt to work through our differences.....	1	2	3	4	5	6 7
23. I search for a solution the other party will accept.....	1	2	3	4	5	6 7
24. My approach is always to meet the other party half way.....	1	2	3	4	5	6 7
25. The most successful negotiation makes everyone a winner.....	1	2	3	4	5	6 7
26. I often let others take the responsibility for solving the problem.....	1	2	3	4	5	6 7
27. When I negotiate, I put a lot of effort into looking for trade-offs so each party gets something out of the deal.....	1	2	3	4	5	6 7
28. People with whom I negotiate, know me as a friendly peacemaker.....	1	2	3	4	5	6 7
29. I put aside decisions until conflicts have quieted down.....	1	2	3	4	5	6 7
30. In a successful negotiation, everyone gives something but everyone also gains something.....	1	2	3	4	5	6 7

**Individual Exercise--Scoring Key:**

Directions: The 30 statements in the survey have been set up in five columns in the chart below. Transfer the number of the response given to each statement, to the appropriate space on the chart. Add up the total number of points in each column and enter the total in the space provided.

Question Number:

1\_\_\_\_ 2\_\_\_\_ 3\_\_\_\_ 6\_\_\_\_ 9\_\_\_\_

4\_\_\_\_ 5\_\_\_\_ 11\_\_\_\_ 12\_\_\_\_ 15\_\_\_\_

7\_\_\_\_ 8\_\_\_\_ 14\_\_\_\_ 17\_\_\_\_ 18\_\_\_\_

10\_\_\_\_ 19\_\_\_\_ 20\_\_\_\_ 21\_\_\_\_ 24\_\_\_\_

13\_\_\_\_ 22\_\_\_\_ 23\_\_\_\_ 26\_\_\_\_ 27\_\_\_\_

16\_\_\_\_ 25\_\_\_\_ 28\_\_\_\_ 29\_\_\_\_ 30\_\_\_\_

TOTAL: A\_\_\_\_ B\_\_\_\_ C\_\_\_\_ D\_\_\_\_ E\_\_\_\_

A = Defeat  
 B = Collaborate  
 C = Accommodate  
 D = Withdraw  
 E = Compromise

# Negotiating Styles

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**SUBSTANCE** = **task** to be accomplished

**RELATIONSHIP** = **balance** of emotion and reason

**A = Defeat: High substance - Low relationship:**

Win-lose competition; pressure, intimidation, adversarial relationships. The negotiator is attempting to get as much as possible. Defeat the other party - perhaps a one-shot deal.

You know how the negotiation should end, so you shut out the other party.

EXAMPLE:

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

Defeat negotiator: *The Thursday morning service time is important to the Board. Either you accept all the terms we've required or we'll go with the other company. Which will it be?*

**B = Collaborate: High substance - High relationship:**

Searching for common interests with the other party; problem solving behavior; recognizing that both parties must get their needs satisfied for the outcome to be entirely successful. Collaborative behavior and synergistic solution. Win-Win outcome.

You look for ways to work together, no matter the other party's approach.

EXAMPLE:

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

Collaborative negotiator: *I really want you to get the contract, but I need your help to convince the Board that you are giving us such a good deal that they should agree to Wednesday mornings. Why do you want to switch to Wednesday?*

Potential vendor: *Thursday mornings present a real problem for us. It means revising a contract on another property, hiring an additional part-time employee, and dealing with equipment storage that wouldn't be required if we performed our services on Wednesday mornings. We took that all into account when we gave a very competitive bid.*

**C = Accommodate: Low substance - High relationship:**

Focuses on harmony and avoidance of substantive differences; yields to pressure to preserve the relationship; places interpersonal relationships above the outcome.

You undervalue assets and your negotiation position.

**EXAMPLE:**

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

Accommodating negotiator: *The Thursday morning service time is important to the Board, but I really like working with you and I want you to get this deal, so I'll get the Board to approve it.*

**D = Withdraw: Low substance - Low relationship:**

Feelings of powerlessness, indifference, resignation, surrender; taking whatever the other party concedes.

You undervalue yourself or your client.

**EXAMPLE:**

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

Withdrawing negotiator: *Okay, I'll let the Board know. We have no other choice.*

**E = Compromise: Moderate substance - Moderate relationship:**

Compromise, meeting half way, looking for tradeoffs; conflict resolution.

Knowing that the other party could be any of these profiles, you are always prepared to give a little to get a little.

**EXAMPLE:**

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

Compromising negotiator: *The Thursday morning service time is important to the Board, but so are the other terms you've agreed to. How much would you be willing to reduce the fees if we agreed to Wednesday mornings?*

**NOTE:** You may adopt any of the five styles at any time depending on the circumstances. It is suggested that the **Collaborate style** offers the greatest versatility and most enduring satisfaction.

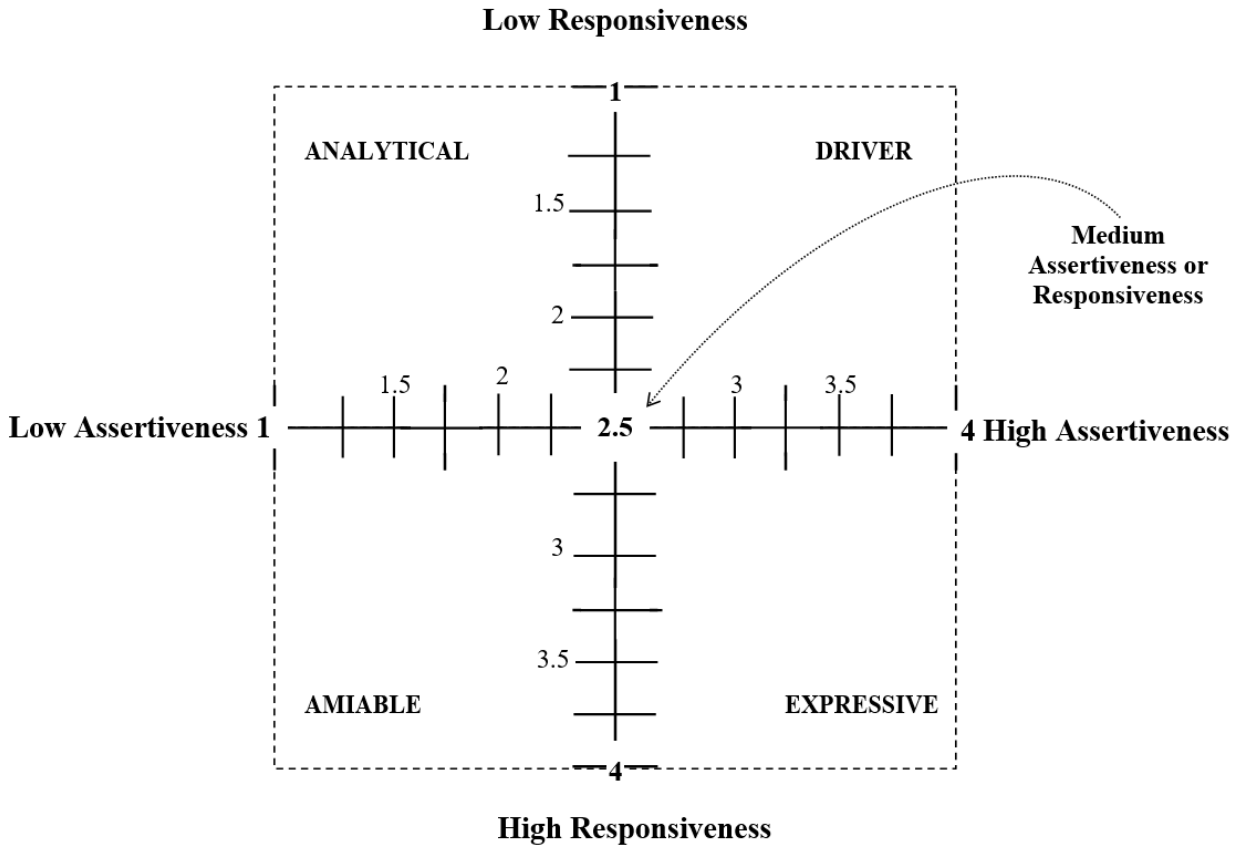
# Assertive vs. Responsive

Use the questionnaire and chart on the next page to assess your social style. Plot the two average scores on the chart.

Assertiveness Rating	Responsiveness Rating
Quiet..... Talkative 1            2            3            4	Open..... Closed 4            3            2            1
Slow to Decide ..... Fast to Decide 1            2            3            4	Impulsive..... Deliberate 4            3            2            1
Going along..... Taking charge 1            2            3            4	Using opinions ..... Using facts 4            3            2            1
Supportive..... Challenging 1            2            3            4	Informal ..... Formal 4            3            2            1
Compliant..... Dominant 1            2            3            4	Emotional..... Unemotional 4            3            2            1
Deliberate..... Fast to Decide 1            2            3            4	Easy to know..... Hard to know 4            3            2            1
Asking questions ..... Making statements 1            2            3            4	Warm..... Cool 4            3            2            1
Cooperative ..... Competitive 1            2            3            4	Excitable..... Calm 4            3            2            1
Avoiding risks..... Taking risks 1            2            3            4	Animated..... Poker-faced 4            3            2            1
Slow, studied ..... Fast-paced 1            2            3            4	People-oriented ..... Task-oriented 4            3            2            1
Cautious..... Carefree 1            2            3            4	Spontaneous ..... Cautious 4            3            2            1
Indulgent ..... Firm 1            2            3            4	Responsive ..... Nonresponsive 4            3            2            1
Nonassertive..... Assertive 1            2            3            4	Humorous ..... Serious 4            3            2            1
Mellow..... Matter-of-fact 1            2            3            4	Impulsive..... Methodical 4            3            2            1
Reserved ..... Outgoing 1            2            3            4	Lighthearted..... Intense 4            3            2            1
<b>Total Score = _____ / 15 = _____</b>	<b>Total Score = _____ / 15 = _____</b>



Plot your score on the chart below. For the horizontal axis, place a ✓ on your Assertiveness Score. For the vertical axis, place a ✓ on your Responsiveness. Then place a ★ where the two intersect.



**Amiable: High Responsiveness, Low Assertiveness**

*Amiables* like the company of other people, though it is more often as a listener than a talker. *Expressives* find *Amiables* useful, because they are prepared to listen to what they are saying. They are loyal, personable and show patience when dealing with other people.

They may not, however, be perceived as people "who get things done" because they spend more time developing relationships with others. They are also unlikely to take risks, as they need to have the feeling of security.

In difficult situations, they are likely to avoid the situation and lack conviction of their feelings. If pushed, they are likely to make promises that they cannot keep. *Drivens* often find *Amiables* frustrating because they want a straight answer and the *Amiable* can find this difficult to deliver.

**Characteristics:** Loyal, personable, patient, uncomfortable with risk, non-confrontational, dislike pressure, enjoy the company of others.

**Basic Value:** Security

**Expressive: High Responsiveness, High Assertiveness**

*Expressives* like the company of other people, though unlike, the *Amiable* this is because they need to "express" themselves. *Amiables* complement them very well, unless the *Expressive* becomes too aggressive and puts them off.

They can be good people to have at a party, because they're enthusiastic, dramatic and "interesting" people to have around. However, if they don't receive the attention they crave, they can get upset and even "difficult" to deal with.

In conflict, they become emotional, prone to exaggeration and unpredictable. The best way to deal with this is to let them calm down. Try not to fuel the fire by saying anything controversial.

**Characteristics:** People oriented, center of attention, positive, emotional, talkative, enthusiastic, dramatic.

**Basic Value:** Recognition

**Analytical: Low Responsiveness, Low Assertiveness**

*Analyticals* can appear unsociable, especially to *Amiables* and *Expressives*. They may seem serious and indecisive. This is because they need to look at every conceivable angle before they feel satisfied. A consequence of this is that they are persistent in their questioning and focus on detail and facts. However, once they have made a decision, they stick with it as they invariably feel that it is infallible.

**Characteristics:** Serious, mull matters over, indecisive, persistent, ask lots of questions, attention to detail.

**Basic Value:** To be correct

**Driven: Low responsiveness, high assertiveness**

*Drivens* are task orientated and expect efficiency from everyone with whom they come into contact. Little emphasis is placed on building relationships with other people. They can be perceived as aggressive and uncaring, especially by *Amiables*, though are often needed to take risks and push things through. In conflict, they may try to "steam roller" over anyone who comes in their way.

**Characteristics:** Task oriented, clearly defined goals, committed, determined, risk takers, efficient.

**Basic Value:** To be in control

## Rapport vs. Boundaries

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In any negotiation, it is imperative to build and maintain a positive relationship with the other parties. This exercise will determine how well you build rapport while also setting constructive boundaries.

For the following exercise, you have 100 points (100%). Distribute them according to what *others* would say about *you*. Think of examples such as your handshake, your tone of voice, your word choice, and your physical gestures.

**Weak**

\_\_\_\_\_

**Gentle**

\_\_\_\_\_

**Firm**

\_\_\_\_\_

**Aggressive**

\_\_\_\_\_

### **Weak**

Weakness in the negotiation would show itself through overexposure of feelings and lack of boundaries. Feelings of weakness in interpersonal communications can be improved by setting and practicing boundaries, working to improve self-esteem, and saying “no” when appropriate.

### **Gentle**

Gentle negotiation tactics include humility, compassion, and humor. Gentle behaviors are ideal for building rapport, especially where the need for strong boundaries is limited.

### **Firm**

Firmness in negotiation includes the stating of boundaries, a commanding personality, and the willingness to question others. The firm personality will be a staunch negotiator.

### **Aggressive**

Aggressive negotiation behavior includes any words or actions which the other party would view as a threat to their own wellbeing. Aggression can come in the form of threatening language, rude gestures, or a refusal to listen. Rather than setting the stage for building a relationship, you may put others on high alert. They may view you as a source of bad experiences, or even serious trouble.

**NOTE:** Appropriate balance is the key. An individual who is 100% weak will consistently get trampled, while someone who is 100% aggressive will consistently damage relationships. 50% Gentle and 50% Firm is an ideal starting point.

## Negotiation Profile Summary

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"I am generally a(n) \_\_\_\_\_ negotiator."

Defeat-oriented  
Collaborative  
Accommodating  
Withdrawing

"I am viewed as \_\_\_\_\_ during my negotiations."

Slightly Amiable  
Moderately Expressive  
Very Analytical  
Driven

"I primarily approach negotiations with \_\_\_\_\_."

(Top one or two)  
Weakness  
Gentleness  
Firmness  
Aggression

**On a Scale of 0-10, How Satisfied Am I with My Results? \_\_\_\_\_**

### Your Negotiation Profile Action Plan

1. Know your negotiation style and tendencies
2. Quickly and accurately evaluate the negotiation style and tendencies of the other party
3. Know how leveraged you are in your current position
4. Act accordingly

The balance of the course will focus on ways to enhance your negotiation strategies.

## Limited vs. Expanded Negotiation

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Negotiations are generally approached with one of two primary attitudes: Limited or Expanded

1. Limited Negotiation – The more pie one party receives, the less pie the other party receives.

### **Example:**

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

CAM: *"I have to stick with my original offer."*

Potential vendor: *"Then we won't be able to hire the additional workers and pay storage for our equipment. We can't do that!"*

CAM: *"Too bad. Take it or leave it."*

Potential vendor: *"Well, I guess this will never work."*

2. Expanded Negotiation – The parties work together to expand the size of the pie available for both.

### **Example:**

Potential vendor: *We will accept all the terms of your proposal, but we need to change our service dates from Thursday mornings to Wednesday mornings.*

CAM: *"Thursday morning service dates are critical. What do you need from me in order for you to agree to the job on Thursday mornings?"*

Potential vendor: *"We would need another \$200 a week to pay for additional help and equipment storage. We just can't afford to lose that money."*

CAM: *"If you will accept all the terms of our proposal, including the Thursday morning service dates, I will arrange to increase your contract by \$100 a week".*

Potential vendor: *"Deal!"*

## Obstacles to Effective Negotiation

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Whether you are a **Limited** or **Expanded** negotiator is primarily a result of your beliefs regarding obstacles. The Limited Negotiator views an obstacle as an ending point or a point of contention, whereas the Expanded Negotiator views an obstacle as an opportunity and looks for an opening to “make a deal.”

### Top 10 Obstacles to Effective Negotiation

1. Fear
2. Limited or bad experience
3. Lack of patience, empathy, or respect
4. Perceived cultural differences
5. Perceived gender differences
6. Personality traits
7. Communication styles
8. Boundaries
9. Education and training
10. Relationship to the parties

**Workshop: Name one obstacle you have recently encountered for each category. Where is the opportunity?**

Vendors

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Residents

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Board Members

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Family Agreements

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Fellow Employees

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# Keys to Effective Negotiation

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## Top 5 Keys to Effective Negotiation

1. If you find yourself in a leveraged position, or otherwise don't have to, *do not negotiate.*
2. Decide when to *reveal your true position.*
3. The party revealing the *first number usually loses.*
4. When in negotiation and asked a question which has an undesirable answer, *respond with a question.*
5. When in doubt, *ask a question, as the questioner controls the conversation.*

### EXAMPLE 1:

Argumentative resident asks, before the final budget is approved, "*How much are my assessments going to be?*"

What is an appropriate response?

### EXAMPLE 2:

Argumentative board member asks, before allowing you to make your contract proposal,  
"*I know somebody who will do this for less money than your current contract. Will you cut your fee?*"

What is an appropriate response?

### EXAMPLE 3:

You present your contract proposal to the board and you ask, "*How do we feel about this proposal?*"

President responds, "*I really like you and the services you'll provide. It is a little more money than we anticipated, but...*"

What is an appropriate response?

# Negotiation Tactics

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When tactics are recognized, the other party may distrust and doubt whether negotiations are being conducted in good faith. Deciding which tactics to utilize, if any, and recognizing them when you see them can make or break a deal. Here are some commonly utilized negotiation tactics:

## The Good?

1. Anchoring – using choices which were reasonable in the past which may not be reasonable today.

It might work on Pawn Stars, but this tactic is likely flawed in a professional or loving environment...unless you hold ALL the cards!

2. Framing – concentrating on an aspect within a frame while ignoring aspects outside of the frame.

Watch out for framing used as a false dilemma, where the framer proposes that there are only two possible choices, when, in fact, there are many.

3. Mirroring – subtly mimicking the tone of voice, words, speech patterns, or physical gestures of another in order to create subconscious feelings of rapport.

## The Bad

4. Baiting – proposing that the other party may or may not be a quality person, depending upon what they do next.

Baiting can also come in the form of flattery, offering compliments designed to bring the baited party to a particular conclusion.

5. Red herring – distracting the party or refusing to discuss major issues until a minor issue is resolved.
6. Broken record – repeating something questionable or untrue over and over to exhaust the other party's willingness or ability to object.

## The Ugly

7. Bait-and-switch – offering something tantalizing at the beginning only to abruptly replace it with something worse at the end.
8. Lying – representing something as true that the party knows to be untrue.
9. Fraud – willfully gaining an unlawful or unfair advantage that results in damage to the other party.

## Negotiation Responses

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### Top 5 Negotiation Responses

1. Awareness

Recognition that we just witnessed a negotiation tactic.

2. Time

Take time to respond, especially if you have not made concrete decisions. A quick response can lead to big mistakes. “I’ve got to think about it,” or “I’ve got to talk to somebody,” will sound like a “no” to the other side. They may have a planned response. The best recourse may be to ask questions, or completely disengage.

3. Choice

Make choices based upon what your party wants, rather than what another party said. Think long-term. Remember that, once the deal is complete, the other party will be gone and you will be left with the results. Make sure that they are the results that you want.

4. Conveyance of message

Silence is sometimes an option; the tactic can be ignored while moving forward. If a verbal response is required, start with “we feel...” “We” implies strength in numbers, and eliminates the potential argument in saying “you,” and “feel” is subjective. It is very difficult to argue with your feeling on a subject.

5. Responsiveness

Think of yourself as a baseball catcher. Be geared up and ready to catch a fast one, deflect a screwball, or block a bad pitch. A “no” from either party is powerful and can stop the whole process.

# Managing Argument

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Maintaining valid logic and the management of emotions while negotiating will inspire confidence in your negotiation skills. The successful negotiator manages the balance of logic, emotions, and expectations throughout the negotiation.

## Valid Argument

A valid argument is reasonable, truthful, and just. If there is rapport, a valid argument will breed little new resistance.

Valid arguments might include sharing historical facts, sharing why the other party's offer is not likely to be accepted, stating indisputable facts, or revealing your current life or business situation.

## Fallacious Argument

Questionable claims and dubious positions are often associated with contract negotiations. Recognizing unreasonable, or untruthful, or unjust arguments can empower you or a party you represent to achieve a positive outcome. Here are some common fallacious arguments and their antidotes:

1. Anecdotal fallacy – using a personal experience or an isolated example instead of sound reasoning or compelling evidence.

Argument: "I've been doing this for 15 years and this is the way it is done. The meeting must be on a Wednesday morning."

Counter: "While I respect your personal experience, I would just like you to show me in the Statutes, Administrative Code or Bylaws that the meeting cannot be on a Thursday morning."

2. Appeal to probability – is a statement that takes something for granted because it would probably be the case.

Argument: "*If you bring that up to the Board it will be rejected, I know it.*"

Counter: "*I understand that's what you've been told, but the Board may feel differently when they see an actual proposal.*"

3. Argumentum ad hominem – the evasion of the actual topic by directing an attack at your opponent.

Argument: "Anybody who's not willing to accept this proposal is just a stupid idiot."

Counter: "Here are three other proposals showing that you're overpriced."

4. Circular reasoning – when the reasoner begins with that with which they end.

Argument: “The reason I didn’t tell anyone that there may need to be a special assessment based on the results of the current roof inspection is that I was sure they would be upset that we hadn’t told them earlier.”

Counter: “What?”

5. False authority – using an expert of dubious credentials or using only one opinion to sell a product or idea.

Argument: “My brother-in-law is an electrician and he says that the wiring needs to be completely redone. I can schedule him to do it right away.”

Counter: “Let’s make sure that’s the case. Who else do we know that can take a look at it?”

6. False dilemma – something is falsely claimed to be an “either/or” situation, when in fact there is at least one additional option.

Argument: “Either you accept my bid or you won’t have a landscaper 30 days from now.”

Counter: “We have an excellent company on standby if we can’t come to terms.”

7. False equivalence – describing a situation with logical equivalence, when there is none.

Argument: “I know my bid is higher than the other one, but I hold a master’s degree and have been in business for 15 years.”

Counter: “The bid we accepted was \$80,000 less than yours and the winning company has great credentials.”

8. Gambler's fallacy – the incorrect belief that a pattern with separate, independent events can affect the likelihood of another event.

Argument: “We should move our accounts to a different bank because the rate they are paying us has gone up every year and our luck is going to run out one of these days.

Counter: “What makes you think that luck has anything to do with the rate they pay?”

# **61E14-2.001:CAM Standards of Professional Conduct**

Amended 12-6-15

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services.

(1) Definitions. As used in this rule, the following definitions apply:

(a) "Licensee" means a person licensed pursuant to Sections 468.432(1) and (2), F.S.

(b) "Community Association Management Services" means performing any of the practices requiring specialized knowledge, judgment, and management skill as defined in **Section 468.431(2), F.S.**

1. controlling or disbursing funds of a community association,
2. preparing budgets or other financial documents for a community association,
3. assisting in the noticing or conduct of community association meetings,
4. determining the number of days required for statutory notices,
5. determining amounts due to the association,
6. collecting amounts due to the association before the filing of a civil action,
7. calculating the votes required for a quorum or to approve a proposition or amendment,
8. completing forms related to the management of a community association that have been created by statute or by a state agency,
9. drafting meeting notices and agendas,
10. calculating and preparing certificates of assessment and estoppel certificates,
11. responding to requests for certificates of assessment and estoppel certificates,
12. negotiating monetary or performance terms of a contract subject to approval by an association,
13. drafting prearbitration demands,
14. coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and
15. complying with the association's governing documents and the requirements of law as necessary to perform such practices.

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.

(c) "Funds" as used in this rule includes money and negotiable instruments including checks, notes and securities.

(2) Professional Standards. During the performance of community association management services, a licensee shall do the following:

(a) Comply with the requirements of the governing documents by which a community

association is created or operated.

(b) Only deposit or disburse funds received by the community association manager or management firm on behalf of the association for the specific purpose or purposes designated by the board of directors, community association management contract or the governing documents of the association.

(c) Perform all community association management services required by the licensee's contract to professional standards and to the standards established by Section 468.4334(1), F.S.

**468.4334 Professional practice standards; liability.—**

(1) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

(d) In the event of a potential conflict of interest, provide full disclosure to the association and obtain authorization or approval.

(3) Records. During the performance of community association management services pursuant to a contract with a community association, a licensee shall not:

(a) Withhold possession of the association's official records, in violation of Sections 718.111(12), 719.104(2) or 720.303(5), F.S., or original books, records, accounts, funds, or other property of a community association when requested by the association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the association.

(b) Deny or delay access to association official records to an owner or his or her authorized representative who is entitled to access within the timeframe and under the procedures set out in Sections 718.111(12), 719.104(2) or 720.303(5), F.S.

(c) Create false records or alter the official records of an association in violation of Sections 718.111(12), 719.104(2) or 720.303(4), F.S., or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

(d) Fail to maintain the records for a community association manager or management firm or the official records of any applicable association, as required by Sections 718.111(12), 719.104(2) or 720.303(4), F.S.

**718.111(12) OFFICIAL RECORDS.—** (summary)

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

1. A copy of the plans, permits, warranties
2. A photocopy of the recorded declaration and each amendment
3. A photocopy of the recorded bylaws
4. A certified copy of the articles of incorporation
5. A copy of the current rules
6. The minutes of all meetings for at least 7 years
7. A current roster
8. All current insurance policies of the association
9. A current copy of any contract
10. Laws of sale or transfer for all property owned by the association.
11. Accounting records for at least 7 years.
12. Ballots, sign-in sheets, voting proxies, and all other papers relating to for 1 year
13. All rental records if the association is acting as agent
14. A copy of the current question and answer sheet
15. All other written records of the association.
16. A copy of the inspection report (related to turnover)

(b) The official records of the association must be maintained within the state for at least 7 years.

(c) The official records of the association are open to inspection by any association member or the authorized representative EXCEPT:

1. Any record protected by the lawyer-client privilege
2. Information in connection with the approval of the lease, sale, or other transfer of a unit.
3. Personnel records
4. Medical records
5. Private personal information – SSN etc.
6. Electronic security measures
7. The software and operating system

(d) The association shall prepare a question and answer sheet and shall update it annually.

(e)1. The association or its authorized agent may charge a fee not to exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred in connection with a response

2. An association and its authorized agent are not liable if 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."

*Rulemaking Authority 468.4315(2) FS. Law Implemented 468.431(2) 468.4315(2), 468.4334, 468.436 FS. History—New 5-5-88, Amended 2-5-91, Formerly 7D-55.007, 61B-55.007, Amended 1-8-98, 5-31-99, Formerly 61-20.503, Amended 4-21-10, 2-4-15.*



## Business Ethics in Negotiation

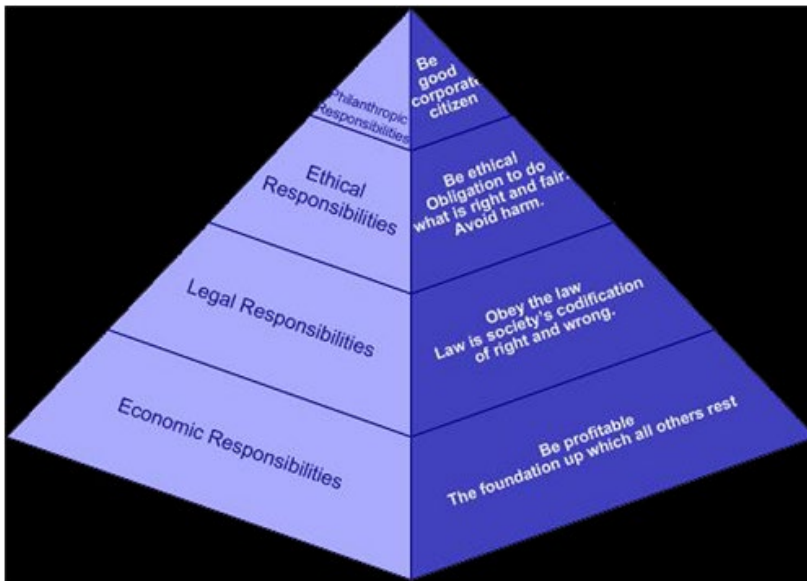
In order for all parties to remain comfortable that the achievement of their goals is possible, it is important to maintain ethical behavior. Ultimately, negotiation goals may be achieved entirely, partially, or not at all. However, if you negotiate ethically, you are more likely to get further negotiation opportunities.

### Business Ethics Pyramid

Your business decisions and actions are the application of your personal values and morals in three primary categories:

1. Economic Responsibilities
2. Legal Responsibilities
3. Ethical Responsibilities

## Business Ethics Pyramid



### Economic Responsibilities

The primary economic and financial obligations of association management are

1. Controlling or disbursing funds, and
2. Preparing budgets or other financial documents

## Legal Responsibilities

As employees of a community association management firm we are contractually obligated to comply with the employer's policies and procedures. Industry laws and rules govern performance of "community association management services" on behalf of an association. Section 468.431(2), F.S. states that community association managers are required to possess "specialized knowledge, judgment, and management skill."

## Ethical Responsibilities

During the performance of community association management services, a licensee is required to comply with the following professional standards:

1. Comply with the requirements of the governing documents by which a community association is created or operated.
2. Only deposit or disburse funds received by the community association manager or management firm on behalf of the association for the specific purpose or purposes designated by the board of directors, community association management contract or the governing documents of the association.
3. Perform all community association management services required by the licensee's contract to professional standards and to the standards established by Section 468.4334(1), F.S. as follows:

### **468.4334 Professional practice standards; liability.—**

(1) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

## Summary

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The best negotiators are smart, tough, respectful, balanced, in-control, and willing to take calculated risks.

### **10 Step Summary for Successful Negotiation**

1. Identify goals
2. Decide whether your best tactic is gentle, firm, or aggressive
3. Exchange offers
4. Ask questions
5. Identify tactics and obstacles
6. Evaluate the validity of positions
7. Expand options for both parties by looking for points of agreement
8. Remain pro-active and goal-focused throughout
9. Work within your legal, ethical, and moral requirements
10. Settle and claim the rewards for both yourself and your customer



# CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

## **Operation of the Community Association's Physical Property**

### **Operation of the Community Association's Physical Property Topic (OPP)**

*Individual Course ID No: 9629900*



# Operation of the Community Association's Physical Property

## *Introduction*

The Florida community association management industry continues to experience dramatic changes in the marketplace and in the regulatory realm. This course examines the operation of the community association's physical property, an item that affects all community associations and, therefore, all community association managers.

### **Learning objectives:**

Upon completion of the course the student should be able to:

- Identify the Board responsibilities for property maintenance
- List steps managers can take to maintain the value of the association's physical property
- Complete an annual maintenance review
- Create a common area maintenance checklist
- Prepare a plan for maintenance of each component of the common area
- Identify the terms of a good, protective contract
- Explain the construction lien process
- List 3 steps that must be taken prior to making the final payment to a contractor
- Discuss at least 4 steps managers should take to prepare for a professional roofing job
- List the 5 key steps to take when hiring a painting contractor
- Understand the need to prepare an emergency plan

## I. MAINTENANCE

The board is responsible to properly maintain, repair, or replace the association property, common elements and limited common elements (which may be a common expense or a separate budget). The board is required to have an effective management plan to meet their fiduciary responsibility. Legal action may be taken against the board for failure to maintain or repair the common property. Legal action may be taken against an owner who fails to take financial responsibility for damage to common property.

### A. Section 718.111 Powers of the Association

1. **Power to Manage Condominium Property.** The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building...
2. **Assessments and Management of Common Elements.** The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property...

### B. Section 718.113 Maintenance Responsibilities

1. **Maintenance of the Common Elements.** Maintenance of the common elements is the responsibility of the association.
  - a. **Maintenance of the Limited Common Elements.** The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements.

b. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements

2. **Material Alteration or Substantial Additions.** 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.

If the declaration as originally recorded or as amended 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 before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018.

3. **Unit Owner Responsibilities.** A unit owner shall not do anything within his or her unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the association property or condominium property which is to be maintained by the association.

4. **Flags.** Any unit owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.



5. **Hurricane shutters.** Each board of administration of a residential condominium 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 must comply with the applicable building code.
  - a. **Board Installed Hurricane Protection.** The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium, install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. However, a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the association pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection except upon approval by a majority vote of the voting interests.
  - b. **Maintenance of the Hurricane Protection.** The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

- c. **Hurricane Protection is NOT a Material Alteration.** The board may operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.
  - d. **Board Cannot Unfairly Withhold Approval.** Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.
- 6. **Attachment of Religious Object.** An association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the unit owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.
- 7. **Board Installed Energy-Efficient Devices.** Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

8. **NEW! Electric Vehicles in Condominiums.** The Legislature finds that the use of electric vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. Therefore, the installation of an electric vehicle charging station shall be governed as follows:
- a. **No Prohibition of Electric Vehicle Charging Stations.** A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle within the boundaries of his or her limited common element parking area. The installation of such charging stations are subject to the provisions of this subsection.
  - b. **No Irreparable Damage.** The installation may not cause irreparable damage to the condominium property.
  - c. **Electricity Separately Metered.** The electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing such charging station.
  - d. **Unit Owner Liability.** The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.
  - e. **Cost of Removal.** If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The association may enforce payment of such costs pursuant to s. 718.116.

- f. **Unit Owner Requirements.** The association may require the unit owner to:
1. Comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.
  2. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof.
  3. Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.
  4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association's approval to install such charging station.
  5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station within 14 days after receiving the association's insurance premium invoice.
- g. **Easement Across Common Elements.** The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection.

9. **§718.121 (2) Construction Lien.** Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of an electronic vehicle charging station pursuant to s.718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may <sup>1</sup>be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

**Not Addressed:** Costs related to upgrading the electrical system because of all the potential increased electrical usage.

### C. Example HOA Maintenance and Alteration

1. **Responsibility for Common Areas.** The Club is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times.
2. **Owner Approval of Expenditures After Turnover.** After control of the Club has been turned over to the Owners, there shall be no expenditures during any fiscal year for material alterations of or substantial additions to the Common Areas in excess of \$130,000 increased by the increase in Consumer Price Index from January 1, 2009 to the date of the subject expenditure, unless first approved by a Vote of the Owners. However, if work that is reasonably necessary to meet the Club's obligations under the first sentence of this Section also constitutes a material alteration or substantial addition, the work may be authorized by the Board of Directors without Owner approval or vote.

## II. MAINTENANCE CHECKLISTS

### 1. A. Preventive Maintenance

1. Prioritize the scheduling of maintenance by utilizing the reserve study
2. Develop a component list
  - a. Pay attention to both common areas and limited common areas
  - b. Provide this information to the insurance company and define whether the unit owner or the association is responsible
3. Perform a physical inspection of the components
  - a. Choose qualified people to inspect
  - b. Include contractor, engineer, architect, building inspector
4. Categorize the components
  - a. Building: Roofs, gutters, windows, siding and trim, decks, garage doors, heating/AC units, elevators...
  - b. Site: Pavement, concrete, area lighting, fences...
  - c. Landscaping: Irrigation heads, controllers, water features, time clocks...
  - d. Recreational / amenities: Clubhouse, pool, spa, sauna, tennis courts, playground, exercise room...
  - e. Plumbing: itemize stacks differentiating the bathroom and kitchen stacks for each unit
  - f. Schematic of the location of the main water shut-offs
  - g. Create a proactive 5-year strategy plan to include the replacing of cast iron pipes to PVC and other components

### B. Annual Maintenance Review

1. Roofs and gutters
  - a. Chimney caps: note any missing or rusted through
  - b. Chimney enclosures: above the roof line
  - c. Roof: obvious repairs or cleaning. Suggest a roofing contractor perform the roof and flashing inspection
  - d. Gutters and downspouts: is cleaning necessary

2. Exterior Concrete; Siding and trim
  - a. Caulking: around windows, doors and trim
  - b. Popped nails
  - c. Peeling paint: scrape, prime and spot paint
  - d. EIFS synthetic stucco: hire a trained inspector
  - e. Concrete restoration and waterproofing
3. Decks
  - a. Check for dry rot and bad drainage
  - b. Supporting posts and joists: check for dry rot and replace bad wood
  - c. Deck fences and rails: connection points
  - d. Sliding glass doors: check flashing for leaks
4. Grounds
  - a. Sealcoat and repair when dry and warm
  - b. Paint: parking spaces and curbs
  - c. Sidewalks: tripping hazards like lifted slabs, moss and algae. Pressure wash if necessary
  - d. Signage
  - e. Lakes
5. Fences
  - a. Materials: use only metal, redwood, cedar, or pressure treated posts.
  - b. Dry rot and infestation: no earth to wood contact except posts
  - c. Solid: solid posts and joints
  - d. **Irrigation:** adjust spray heads if necessary

6. Lighting
  - a. Defective: broken, cracked, or rusting fixtures
  - b. Energy efficiency: maybe upgrade to more efficient high pressure sodium, metal halide, halogen, or fluorescent
  - c. Emergency lighting
7. Water and drainage
  - a. Check for water ponding around buildings
  - b. Drainage: regrade and fill as necessary
  - c. Ground drains: clear drains or install drain tile
  - d. Storm drains: clean as needed
  - e. Booster pumps; Cooling towers; water softener
  - f. Water meters (for pools)
8. Landscaping (with the landscape contractor)
  - a. Irrigation system: broken pipes, heads, clogged valves
  - b. Splash blocks: add if needed under downspouts
  - c. Wet areas: spongy areas may indicate drainage problems
  - d. Ground cover: evidence of pests or bare spots
  - e. Trees: don't depend on landscape contractor; inspect every 2 or 3 years by arborist
  - f. Disease: check for split and broken branches, disease and other necessary corrective repair
9. Pool and spa (with pool maintenance contractor)
  - a. Loose items: check plaster, railings and coping stones
  - b. Possible trip hazards
  - c. Check for necessary reconstruction
  - d. Safety check playground equipment



10. Life Safety
  - a. Signage
  - b. Fire Extinguishers
  - c. Sprinkler
  - d. Fire pump
  - e. Fire alarm
  - f. Fire rated doors
  - g. Hallways cleared of personal items
  - h. Smoke detectors and smoke alarms
11. Elevators
  - a. Pit clean up
  - b. Shaft alignment
  - c. Recall capability for emergency
  - d. Annual inspections

**C. Annual Fix-Up**

Consider creating an annual plan to perform preventive common area maintenance

1. Build the budget around annual maintenance
2. Keep current with monthly or quarterly inspections.
3. Keep a file of observations
4. Continuity: establish long term relationships with reputable service providers
5. Annually check and compare contractor costs
6. Choose between Association Staff versus Contracting Out

CHARACTERISTICS OF A MAINTENANCE SYSTEM	
EFFECTIVE	INEFFECTIVE
Cost-effective	Budget overruns
Smooth daily operation of the community	Crisis-oriented maintenance
	Absence of established routines for performing maintenance
	Slow response time
	Poor record-keeping
	Increased frequency of maintenance related insurance claims
Efficient use and replacement of equipment	Frequent equipment break-downs
Buildings and grounds in good condition	Buildings and grounds are “run-down”
Health and aesthetic standards of the community are being met	Local health or building department citations for corrective action
Positive outlook and atmosphere among community members	A board that gets involved in day-to-day maintenance issues
	Residents or a board that show lack of respect toward management, employees, and all parties involved with maintenance
	Defensive employees

#### D. Inventory

The typical management control used to identify physical assets and their maintenance needs is an inventory. This is a record of all real and personal physical property owned and maintained by the association.

Inventories usually record the following information for every item listed:

Date of purchase	Warranty	Quantity
Original installer / builder or service contractor	Description	Cost
Extended warranty and provider	Special maintenance needs	Estimated replacement data

## ANNUAL FIX-UP CHECKLIST

### Smoke Detectors

Change batteries for those that require them and check to make sure all are operating properly.

- Carpets should be cleaned at least once a year and more often if traffic demands it.
- Furniture upholstery and draperies of common areas should be inspected and cleaned if necessary or at least every 2 years.
- Common area air ducts in the hallway, clubhouse, etc. should be cleaned at least every 3 years to abate spores, dust, and mold that trigger respiratory problems or allergies.

### Air Heating/Cooling System Maintenance

Remove any flammables stored in the vicinity which could be ignited by the A/C cooling system when it's fired up. Change the filters.

Set the thermostat to cooling mode and test the system ensure it is in working order.

1. Inspect thermostat for proper operation.
2. Inspect filter and change or clean as needed.
3. Check all electrical components and controls.
4. Oil motors as needed.
5. Inspect heat exchanger for possible cracks, which would introduce carbon monoxide into the living space.
6. Check air flow. If diminished, it may be necessary to clean the evaporator coil and ductwork.

### Door & Window Weather Stripping

Check the weather stripping around all doors and windows and replace it if necessary.

### Windows & Doors

- Inspect and replace cracked or broken glass. Repair frames; replace broken, worn, or missing hardware; tighten and lubricate door hinges and closers; check for broken or missing glazing.
- Consider installing thermopane windows to replace storm windows and improve energy efficiency.

Install hurricane impact Miami-Dade code windows and doors (both frame and window must be impact).

### Garage Doors

Clean and lubricate hinges, rollers, and tracks; tighten screws.

- Arrange for sweeping.
- Have drains cleaned out.
- Repaint curbs.
- Repair deteriorated areas.

### Exterior Lighting

- Replace burned out bulbs for better security and night visibility.
- Reset exterior lighting clock to adjust for seasonal change or replace with photocell system.

### Water Heaters

- Every 6 months you should turn off the energy source and flush until clear of sediment.
- Inspect flue assembly (gas or oil heater); check for leaks and corrosion.

### **Foundation**

- Close or plug foundation vent openings.
- Check and correct grade for proper drainage away from foundation.
- Repair cracks.

### **Decks**

Remove potted plants and removable carpet which can promote wood dry rot under wet conditions.

- Clean gutters and downspouts and make sure they are running clear.
- Correct known drainage issues.

### **Landscaping**

- Prune back trees or shrubs at least 3 feet from the siding and roof.
- Fertilize, thatch, aerate, and reseed turf areas.

### **Pipes**

- Replace hose bibs with ball valve shut offs.
- Perform a preventive flush or rooting to prevent drain line blockage back-ups and flooding due to build-up or tree roots.

## Roof

- Inspect and repair flashing around chimneys, skylights, and vents.
- Sweep to remove debris; clear all drains.
- Inspect and repair separated roofing seams.
- Inspect and repair parapet wall caps.
- Inspect and repair vent and pipe flashing

## Siding or Concrete

Inspect siding (especially on the sun and weather sides) for evidence of deterioration, including cracks, splintering, decay, and insect damage; clean, treat, recaulk, and repair as

- Brick and stone. Check joints between wood and masonry. Waterproof, repair, or repaint if necessary.
- Wood. Look for peeling paint or splitting wood; evidence that water is getting into the siding. Prime and repaint as needed.
- Stucco. A chalky residue is evidence of oxidation and deterioration of paint or color coat that reduces stucco's effectiveness.

Check for cracks which allow water to get in around windows and doors. Hire a professional to correct the problem.

- Trim. Remove peeling paint on the trim and fascia boards, window sills, and sashes; prime and repaint as needed.

**E. Responsibilities: Association or Owner**

1. Florida Statute 718 clearly specifies the responsibility for any casualty within a unit, if not caused by neglect, is owner responsibility. During a casualty, the drywall is the Association responsibility.
2. Here is a form to clarify responsibilities. It is only a sample, but we want to motivate you to create a Board Resolution consistent with the governing documents to limit insurance disputes and operate in a consistent and clear manner.

<b>Areas of Responsibility</b>	
<b>1.</b>	<b>Exterior Siding &amp; Trim</b>
A	Repair, replace, paint, caulk
<b>2</b>	<b>Gutters &amp; Downspouts</b>
A	Repair, replace, paint, caulk, clean
<b>3.</b>	<b>Roofs, Roof Flashing &amp; Decking</b>
A	Repair, replace
<b>4.</b>	<b>Perimeter Wall Studs &amp; Insulation</b>
A	Repair, replace
<b>5.</b>	<b>Perimeter Wall Interior Sheet Rock</b>
O	Repair, replace
<b>6.</b>	<b>Party Wall Studs</b>
A	Repair, replace
<b>7.</b>	<b>Party Wall Sheet Rock &amp; Insulation</b>
O	Repair, replace
<b>8.</b>	<b>Building Ceiling &amp; Floor Rafters</b>
A	Repair, replace

**9. Unit Interior Wall Sheetrock & Finish**

- O Repair, replace

**10. Unit Interior Ceilings & Floors**

- O Finish, sheetrock, insulation, subfloor
- A Ceiling & floor rafters (SEE #8)

**11. Unit Fixtures & Finishes**

- O Appliances, cabinets, plumbing fixtures
- O Floor coverings, window treatments

**12. Unit Doors & Locks - Exterior**

- O Repair/replace door, door casing and locks
- A Paint, caulk, flash, exterior trim

**13. Windows & Screens**

- O Repair, replace
- A Paint, trim, caulk, flash

**14. Electrical**

- A Electric panels, meters
- A Exterior outlets & fixtures
- A Wiring from meters to unit breakers
- O Unit electric wiring, switches, etc.

**15. Plumbing**

- A Common supply and drain lines
- O Supply/drain lines from connection with common
- O Unit water shut-off valves, interior fixtures or any pipe only servicing that unit
- A Central hot water heater
- O Unit hot water heater

**16. Decks & Patios**

- A Repair, replace, paint
- O Surface materials



**17. Hallways & Stairs - Common Area**

A Repair, clean, paint

**18. Sidewalks & Steps - Common Area**

A Repair, replace, clean

**19. Insect & Pest Control**

O Unit interiors

A Unit exteriors: wood boring or stinging insects; animals

**20. Water & Smoke Damage**

O Damage to unit interior from unit or neighbor source

A Damage to unit interior from common area source

**22. Common Area Trees, Flowers, Plants & Shrubs**

A Maintenance, removal, replace

**23. Parking Garage & Lot**

A Clean, restripe, repair, signage

**24. Elevator**

A Repair, replace, remodel

**25. Pool, Pool Deck, Furniture & Equipment**

A Maintenance, repair, replace, remodel

**26. Fences**

A Repair, replace, refinish

**27. Signage-Entry, Address, Stree**

A Repair, replace, refinish

# LEAVE IT TO THE PROFESSIONALS

## WHAT MAINTENANCE REPAIRS REQUIRE A STATE-LICENSED CONTRACTOR?



The Florida Department of Business and Professional Regulation licenses contractors to perform services that alter the structure of a building as well as affect public safety.

For a complete list of construction trades that are licensed and regulated by DBPR, contact the department at **850.487.1395** or online at **www.MyFloridaLicense.com**. You can also check with your local building department for any additional local licenses or permits that are required.

Unlicensed activity occurs when an individual who is not licensed by the state provides or offers to provide services that require a license in the state of Florida. Unlicensed activity is against the law. Unlicensed activity cases are referred to the State Attorney's Office.

Protect your property and residents' safety by only hiring licensed contractors. To report unlicensed activity, call the Unlicensed Activity Hotline at **1.866.532.1440**.



### REQUIRES A LICENSE

- Build or replace a roof
- Install water heaters
- Install A/C units
- Clean central air and heat ducts (requires partial disassembly of the system, such as removal of air grills)
- Repair or replace swimming pool pumps
- Perform plumbing work that requires the contractor to connect lines to drinking water
- Install ceiling fans and light fixtures
- Install or replace electric outlets and switches

### DOES NOT REQUIRE A LICENSE

- Paint
- Install cabinets
- Install wood or tile floor
- Install insulation
- Clean swimming pools
- Change an A/C filter or clean ducts that do not require removal of the air grills
- Change light bulbs in fixtures
- Change the cover plates on outlets

## II. WORKING WITH CONTRACTORS

### A. Unlicensed Contractors

Associations lose hundreds of thousands of dollars to unlicensed and uncertified contractors every year. Associations should protect their property by avoiding unlicensed contractors.

1. Hiring an unlicensed contractor is in violation of Construction Law Florida Statute 455.228 and is subject to a fine of up to \$5,000.00
2. Unlicensed contractors cannot pull permits
3. Unlicensed contractors may not be familiar with building codes, inspection sequences and inspection requirements.
4. Unlicensed contractors are often uninsured. Many homeowners' insurance policies exclude claims arising from unlicensed construction practices.
5. If the Association hires an unlicensed contractor, the Department of Business and Professional Regulation or the Building Department may issue a cease and desist order to stop the work, and may decide to take legal action against the Association to impose civil penalties for aiding and abetting unlicensed activities.
6. If the Association hires an unlicensed contractor and the work is not completed in accordance with state and local building codes, the Association may have to pay additional monies to have the work brought into compliance.
7. If an unlicensed contractor does not pay his subcontractors or suppliers, the Association may be liable for these costs. Subcontractors and/or suppliers who work for unlicensed contractors still have the right to file liens on the Association's property.

**B. Overview of Steps to Take to Protect the Association**

When hiring a contractor, Associations should:

1. Always ask to see the State of Florida license or verify by going to [www.myfloridalicense.com](http://www.myfloridalicense.com)
2. Note the license number and verify that the license is current and in good standing. To check on the license, call 850-487-1395 or visit [www.myfloridalicense.com](http://www.myfloridalicense.com).
3. Ask for references and check each one.
4. Always get several estimates for comparison.
5. Never pay in cash, and never provide large up-front deposits. Beware of scams when individuals ask for money up-front or will only accept cash.
6. Beware of writing checks made payable to individuals especially when the Association is dealing with an entity.
7. Everything should be in writing. At a bare minimum, a contract should include the contractor's names, address and professional license number; a detailed description of the work to be completed and materials to be supplies; a completion date and total cost.
8. Have an attorney review all contracts before a Board Director signs the contract.
9. Verify that the contractor has workers' compensation coverage and a general liability policy with limits of at least \$1,000,000. Workers Compensation exemptions do no protect the Association.
10. **Get a certificate of insurance.** Secure written confirmation that your contractor's insurance company has named you as an additional insured on its general liability policy before the contractor starts work.

### C. A Good Contract

A good contract will include clauses that keep costly changes to a minimum.

Include:

1. Names and business addresses of the parties.
2. Date that the contract is signed.
3. A short narrative that summarizes the agreement.
4. Obligations of each party. For example, the contractor agrees to provide the labor and material to complete the scope of work (attached) in a timely and professional manner. All changes or additions must be approved in writing by a Board Officer. The association is obligated to pay the contractor in 4 progress payments within 7 days of billing.
5. Time frame for job completion. This clause usually includes the phrase, “Time is of the essence” to imply that work must be completed barring only unforeseen circumstances like material delay or weather.
6. Cost of the work and materials. This could either be a set price or an hourly labor rate with material at, say, cost plus 10%.
7. Quality checks prior to payment
8. Progress payments based on work completed: due on completion or in installments
9. Penalties for failing to meet the deadline or late payment penalties.
10. Labor and material warranties
11. Terminating the contract. Define under what condition either or both parties could terminate the contract. Breach of contract can be enforced by either. There should also be a mutual agreement clause to terminate.
12. Arbitration or dispute mediation if there is a problem that cannot be worked out.
13. Paying attorney fees. If the matter lands in court, the prevailing party should be entitled to payment of attorney fees and legal costs.
14. Hours when work may be performed
15. Requirement for liability and workers compensation insurance 10% holdback pending final review
16. **Include indemnity agreements in contract language.** Include “hold harmless” and other indemnity agreements that protect you in written contracts or work orders. These agreements make the contractor—not you—responsible to pay for any accidents or losses resulting from their own negligence. Your attorney can provide you with appropriate wording that will protect you.

**D. Legal Documents**

1. Performance Bond: This is a guarantee by a surety (a third party) to protect the association if the contractor fails to perform or finish the work. Because there is a cost to the association, a performance bond typically is used with certain large projects.
2. Payment Bond: This bond comes in a package with the performance bond. The surety guarantees that the contractor's suppliers and any subcontractors will be paid if the contractor does not pay them.
3. Waiver of Lien: This is a document which gives up the right to make a claim against the association for payments not received.
4. The first step to take when commencing a construction project is to record a Notice of Commencement (see copy on next page).

**NOTICE OF COMMENCEMENT**

Permit No. \_\_\_\_\_  
Tax Folio No. \_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in the Notice of Commencement.

1. **Description of property:** (legal description of property and street address if available).  
\_\_\_\_\_  
\_\_\_\_\_
2. **General description of improvement:**  
\_\_\_\_\_  
\_\_\_\_\_
3. **Owner information:**  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Interest in property \_\_\_\_\_  
Name and address of fee simple titleholder (if other than Owner)  
\_\_\_\_\_  
\_\_\_\_\_
4. **Contractor:**  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_
5. **Surety:**  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Amount of bond: \$ \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_
6. **Lender:**  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_
7. **Persons within the State of Florida designated by Owner** upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_
8. **In addition to himself or herself, Owner designates** the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_
9. **Expiration date of notice of commencement** (the expiration date is 1 year from date of recording unless a different date is specified) \_\_\_\_\_

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_  
*(Printed Name of Person Signing Notice)* *(Owner or Owner's Authorized Officer/Director/Partner/Manager)*  
Owner's Name \_\_\_\_\_  
Owner's Address \_\_\_\_\_

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENT UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY, A NOTICE OF COMMENCEMENT MUST BY RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

Verification Pursuant to Section 92.525, Florida Statutes

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Natural Person Signing Above

5. If your contractor or subcontractors are posting payment bonds (which may exempt your property from liens), those bonds must be recorded in the County Records along with the Notice of Commencement. A copy of the Notice of Commencement and Bond should also be given to the appropriate building department and inspecting authority.
6. Notice to Owner/Preliminary Notice is usually served upon you via Certified Mail, fax, hand delivery, or posted on the job site.
7. Keep track of everybody who has served a Notice to Owner on you because they must be paid to avoid liens on your property.
8. Request the contractor to close out the NOC when project is completed.

#### E. Construction Lien Law

**NEW! 718.113(2)(a) Approval of Material Alteration or Substantial Addition.** 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 before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018.

**Not Addressed:** May the Board still authorize a material alteration or substantial addition without a vote and have the association owners ratify it at a later date.

1. The lien right begins at first labor or material
2. The lien must be filed within 90 days of completion

A Claim of Lien must be recorded within ninety (90) days from the date the lienor last furnished labor or materials to the project. It is significant to note that returning to a project to perform inconsequential work, such as minor punch list type repairs, may not extend the ninety (90) days from the last date that meaningful work was performed.



3. The lien terminates 1 year after filing if not 'perfected' (foreclosed)

The Construction Lien Law is confusing and requires careful consideration when pursuing enforcement of a lien and paying those that furnish labor and materials to improve real property. As required by Chapter 713, Florida Statutes, timetables established for recording the Notice of Commencement, serving Notices to Owner, recording and foreclosing on a Claim of Lien must be followed for a lien may be declared invalid.

By following the Construction Lien Law, owners can be assured that upon completion of construction and payment of the contract price, your property will be free and clear of all liens.

Any direct contract greater than \$2,500 between an owner and a contractor must contain the following (edited) notice:

NOTICE TO OWNER

THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY.

THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN.

IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL.

IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY.

IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR ITEMS THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.

TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER."

This (edited) Notice to Owner must be served in order to 'perfect' the lien:

WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL.

UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

4. Every time you pay your contractor for the construction on the project make sure that all subcontractors and suppliers that have served you with a Notice to Owner have been paid in full.
5. Call everybody who served a Notice to Owner on you and find out how much they are owed.
6. When you make your next payment to your contractor make sure that you get a Release from everybody who served a Notice to Owner
7. Some owners write joint checks, which are checks made payable jointly to the contractor and the company who served the Notice to Owner.
8. The bottom line is to ensure that everyone who serves a Notice to Owner is current with their payments every time you pay your contractor, and issue a Release of Lien to reflect this.
9. The Florida Construction Lien Law also gives you the right to require a list of money owed to subcontractors from your contractor every time you make a payment, but you still have an affirmative duty to make sure everyone who serves a Notice to Owner is paid in full.
10. Do not make final payment until the contractor gives you an Affidavit stating that all lienors under the direct contract who have timely served a Notice to Owner have been paid in full or, alternatively, identify the names of the lienors who have not been paid in full and the amount due or to become due to each of them.
11. Do not make your final payment to your contractor until you receive final Releases of Lien from every entity who served a Notice to Owner. If there is a problem getting these releases, you must make sure that everyone serving a Notice to Owner gets paid before you issue that last check to the contractor.

**BUILDER'S / CONTRACTOR'S AFFIDAVIT**

**STATE OF FLORIDA**

**COUNTY OF HIGHLANDS**

\_\_\_\_\_, As \_\_\_\_\_ Of \_\_\_\_\_, being first duly sworn deposes and says as follows:

That he is the Owner/Builder and/or Contractor who constructed or repaired, or caused to be constructed or repaired, the improvements on the property described below, being in Highlands County, State of Florida.

That all charges and costs for labor performed, material furnished and fixtures installed on said premises have been fully paid; that said premises are free and clear of all lienable claims whatsoever arising under and by virtue of said construction.

That no chattel mortgages, conditional sale contracts, security agreements, financing statements, retention of title agreements, or personal property leases have been given or are now outstanding as to any materials, fixtures, appliances, plumbing, heating, lighting and other equipment is fully paid for, including all bills for the repair thereof, except as follows:

That \_\_\_\_\_ Hereby waives and releases (its)(his)/(their) right to file a mechanics' or materialmen's lien against said property.

That said construction was completed on \_\_\_\_\_

**NOTE:** Where the general contractor is a corporation, the name and signature of the affiant should be that of an officer of the corporation, preferably the President.

\_\_\_\_\_ Owner/Builder Contractor

Subscribed, and sworn to before me on this day of \_\_\_\_\_, 20\_\_\_\_. Notary Public My Commission expires:

**FOR USE WITH CORPORATE CONTRACTOR:**

\_\_\_\_\_ A Corporation of the state of Florida, joins in the execution of this instrument for the purpose of adopting all the representations of fact made in the foregoing affidavit and joining in the indemnity agreement therein contained.

NAME OF CORPORATION

BY: As President Affix Corporate Seal

**F. Roofing Contractors**

1. Get at least **2** bids from qualified contractors
2. Check contractor licensing information
3. Check references from each bidder
4. Use an expert to prepare detailed Request For Proposal (RFP) specifications including:
  - a. removal and disposal of existing roof
  - b. repair of damaged sheathing
  - c. protection of landscaping, decks, etc.
  - d. properly installed sheathing if required
  - e. proper underlayment
  - f. proper attic ventilation
  - g. selection of the right roof system
  - h. proper flashing
  - i. gutters and downspouts, if necessary
  - j. rain protection during course of work
  - k. regular debris clean up
  - l. warranty for product and service
5. Making several progress payments is normal, but the payments should be based on actual work completed
6. Never give final payment until all work is completed and the contractor provides a properly executed lien affidavit

**G. Painting Contractors**

1. Get competitive bids (at least 2) from qualified contractors based on identical and clear Request For Proposal (RFP) specifications provided by the paint manufacturer
2. Take advantage of the paint company's expert advice
  - a. Prepare 3 color boards with trim and body options
  - b. Ask for an **onsite** inspection
3. Have a long-term plan for future painting needs
4. Get physical: check out the buildings and inspect the work
  - a. Check effects of irrigation
  - b. Have a responsible party check the work
  - c. Review the project again after a few months
5. Don't get caught with timing problems due to weather and the contractor's other projects

<b>TIPS FOR WORKING WITH A CONTRACTOR</b>
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2. Consider the pros and cons of spreading total work costs over a 12-month period.
3. Consider doing some types of work in the off season. The Association may save money.
4. Communicate closely with the contractor about all contract services.
5. Do not anticipate getting more than what is contained in the contract and specification sheet.
6. Funnel complaints through proper channels.
7. Contact the contractor if an employee does not complete a job properly.
8. Consult an insurance agent to determine association and contractor insurance needs.

**III. LAWS AND CASES: OPERATION OF THE COMMUNITY ASSOCIATION'S PHYSICAL PROPERTY****Lakeview Reserve Homeowners v. Marondo Homes, Inc.****No. 5D09-1146 (Fla. 5<sup>th</sup> DCA)****9. Compensation for Construction Defects: HOA's**

This was a significant ruling finding home buyers and homeowners' associations are entitled to a common law implied warranty of fitness and merchantability with respect to the roadways, drainage systems, retention ponds and underground pipes in a residential subdivision. The Court considered the marketing materials indicating that homes were available for immediate occupancy, essentially "move-in" condition. The decision, *Lakeview Reserve Homeowners v. Marondo Homes, Inc.*, No. 5D09-1146 (Fla. 5th DCA), was filed on October 29, 2010. Since it conflicts with case law from another Florida district, the question whether to extend the home buyer's warranty to improvements that are necessary to live in the home, even if those improvements do not physically support the structure of the home itself, was certified for consideration by the Supreme Court of Florida.

The Court found that certain types of improvements were necessary to live in a home - drainage systems, underground pipes, etc. It further said since a home buyer:

- cannot really inspect this portion of the property before purchase,
- does not have the ability to correct the work during the construction phase, and
- would not typically recognize problems with these portions of the property even if they were allowed on to the site during this early construction phase they "must rely on the expertise of the builder/developer for proper construction of these complex structures".

According to this case, if the builder/developer represents that everything is ready for immediate occupancy, it must warrant that the improvements necessary for occupancy are fit for their particular purpose. The Court declined to extend this notion of implied warranty to subdivision features it did not consider essential, such as a clubhouse or recreational facilities. HOA attorneys now have a potentially viable course of action to resolve complaints about the inadequacy of infrastructure construction.

**Greenwashing**  
**Federal Trade Commission**

Greenwashing is a term describing the deceptive use of green PR or green marketing in order to promote a misleading perception that a company's policies or products (such as goods or services) are environmentally friendly. Greenwashing is a type of "spin".

Community associations have traditionally been a prime target for certain unethical practices. Budget shortfalls drive association Boards to consider alternatives for their communities. Some of these communities have saved tremendously, just by changing certain practices or updating and improving certain systems. The FTC says that community leaders have to scrutinize representations very carefully. The U.S. Green Building Counsel's Leadership in Energy and Environmental Design rating system (LEED) is an excellent source of information for community leaders. Details may be found at [www.usgbd.org](http://www.usgbd.org).

**10. Directors & Officers Liability**

**Eastpointe Condominium I Assn, Inc. v Travelers Casualty & Surety Company**

It is not uncommon for a unit owner (or several unit owners) to feel that the Board is not performing properly and a suit is filed seeking various remedies such as:

- injunctive relief (demanding that work, repairs, maintenance or improvements, be performed);
- reimbursement for costs sustained as a result of damages to property that would not otherwise exist if the Board appropriately attended to the needs of the property;
- damages for the loss in property value, loss of enjoyment of the property, loss of use and the like; and
- reimbursement of attorney's fees and costs for bringing the claim.

Many of these cases involve differences in opinion as to whether maintenance/repairs were or are necessary, what products and methods to use for the repairs or maintenance, or which contractor is better. In many cases the amount of money sought by the unit owner or owners is less than what it costs to defend the claims. Defense costs can easily eat into the association's cash flow.

Is the association's Board of directors protected against claims of negligence or breach of fiduciary duty? If the D&O policy has a similar property damage exclusion as existed in the Travelers policy, maybe not.

In *Eastpointe Condominium I Asn. Inc. v. Travelers Casualty & Surety Company* an owner sued the association claiming the Board of directors failed to adequately maintain the roof and other portions of the property. The Traveler's D&O policy excluded coverage for loss in connection with any claim "for or arising out of any damage, destruction, loss of use or deterioration of any tangible property including ... mold, toxic mold, mildew, fungus, or wet or dry rot." They took the position that the "property damage" exclusion in the policy controlled. The Court agreed. The 11th Circuit Court of Appeal affirmed that decision in an unpublished opinion.

What does your policy cover? What does it exclude? If you're not sure, check it out with your agent and compare policies before you renew. Coverage denials and disputes are becoming more prevalent.

### **Section 104.1.1 Florida Building Code**

#### **Association Requirement to Obtain a Building Permit**

The leadership of your association may not be familiar with local building codes. It is not uncommon for association leadership to assume that it is the contractor's responsibility to make sure a building permit has been obtained. However, that is not the case. As property owner, the association is responsible for obtaining the required building permit.

Section 104.1.1 of the Florida Building Code states: "Any owner, authorized agent or contractor who desires to construct, enlarge, alter, repair, move, demolish, or change the occupancy or occupant content of a building or structure, or any outside area to be used as part of the building's designated occupancy (single or mixed) or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the technical codes, or to cause any such work to be done, shall first make application to the building official and obtain the required permit for the work "



Some contractors try to avoid the building permit requirement. However, if the building inspector finds the work in progress without the required permit, the Association will be cited (not the contractor) for having work done without a permit. This usually results in double fees for the permit and/or fines for having work done without a permit.

**11. Developer's Challenge to Notice of Meeting not Proper Defense to Construction Defect Claim**  
**Lake Forest Master Community Association, Inc. v. Orlando Lake Forest Joint Venture, et al., Case No. 5D08-2096**

The membership voted in favor of Lake Forest Master Community Association, Inc. ("Lake Forest") filing a lawsuit for construction defects against the Developer. The vote was required by Section 720.303(1), Florida Statutes. The Developer claimed that Lake Forest shouldn't be permitted to continue its lawsuit since it failed to properly notice the meeting. The Court of Appeals relied on Section 720.306(7), Florida Statutes and the Association's bylaws when concluding that the Association had complied with all requirements.

Section 720.303(1), Florida Statutes:

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... 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.

Following protocol saved this Association. The appellate court evaluated the procedures utilized by Lake Forest to call the annual meeting, as well as the procedures utilized to recess and reconvene the meeting. The court noted:

- Notice of the annual meeting was furnished by mail to all owners and posted as required by law. The mailing included a general proxy;
- Minutes of the annual meeting indicated that the members agreed to recess the meeting and reconvene it for specific date. There was testimony indicating that the President likewise announced the time and place for reconvening the meeting;
- At the reconvened meeting, the President announced the annual meeting would be reconvened again at a specific date, place and time. That information is reflected in the minutes;
- A Motion was made, seconded and the majority of members participating voted in favor of filing legal action against the developer when Lake Forest reconvened the meeting the second time.

#### IV. HURRICANE BUSINESS TOOLKIT RESOURCES

[www.fema.gov](http://www.fema.gov)

<https://www.floridadisaster.org/>

# CONTINUING EDUCATION FOR FLORIDA CAM LICENSEES

## **The Association Budget**

**Insurance and Financial Management Topic (IFM)**

*Individual Course ID No: 9629896*



# **INSURANCE AND FINANCIAL MANAGEMENT TOPIC: *THE ASSOCIATION BUDGET***

## **Key topics in this unit:**

Upon completion of this course, students should be able to:

- list the association budget required provisions
- identify the steps to comply with budget notice requirements
- explain voting requirements to accept the budget
- estimate future operating expenses
- estimate reserve requirements
- describe mandatory reserve categories
- explain the Association's investment alternatives
- explain pooled reserves and prepare a pooling schedule
- understand budget content requirements
- explain notice and budget adoption requirements
- describe the process for reconsideration of a budget adopted by the Board
- list common surplus requirements
- discuss mandatory contents of the assessment notice
- describe how to calculate and collect assessments
- explain the statutory procedure to adopt a special assessment
- comply with requirements for maintaining financial records, reports and statements

## The Association Budget

### Overview of Association Finances

- Unless the governing documents provide otherwise, the board of directors has the authority to levy assessments, including special assessments.
- The board must prepare an annual budget of the revenues and expenses and hand deliver, electronically transmit or send a copy to the unit owners at least 14 days prior to the budget meeting.
- The budget must include all estimated revenues and expenses and reserves for certain deferred maintenance and capital expenditures projects.
- Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association must prepare a financial report for the preceding fiscal year.
- No later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association must 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 report must comply with statutory oversight provisions.

## **I. THE ASSOCIATION BUDGET**

The budget is the financial roadmap outlining the estimated expenses for operation of the association and maintenance of the common property, the money needed to fund reserves for replacement, and the basic services to be provided. It is prepared annually for a 12-month period. Once adopted, the budget is the basis for assessments charged to each member.

### **Checklist of condominium budget required provisions:**

- ✓ Specific beginning and end date
- ✓ Assessment amount by unit type
- ✓ Current reserve schedule attached and made part of the budget
- ✓ Limited common elements schedule (if owners pay separately)
- ✓ Estimated common expenses for taxes, insurance, maintenance, utilities, administration, management and reserves
- ✓ Fees to DBPR
- ✓ Delivery of required notice. We know that Section 718.112(2)(e), Florida Statutes says 14 days notice is required, but your community documents may create additional obligations
- ✓ Minutes must reflect adoption
- ✓ Copies of proposed and adopted budget are official records

### **Quick budget checklist for HOA**

- ✓ Are your budgets in the same exact format as condo association budgets?
- ✓ Do you mail the proposed budget with notice of the budget meeting?
- ✓ Do you send it out to the members afterwards?
- ✓ What about reserve accounts - does your association have statutory reserves, non-statutory reserves and do you know the difference?
- ✓ Does it contain the appropriate disclosures?

## Financial Reporting Requirements

1. Association leaders also have to contend with year end financial reporting requirements. Association leaders also have to contend with year end financial reporting requirements. What level of financial reporting is required? Informal or Formal – compiled, reviewed or audited? Is there enough money in the budget?

*Question: At the recent annual meeting for my condominium association the owners were presented with a question asking whether the association should waive the requirement to have an audit of the association financial records conducted. The same question has been asked for the past few years. Our bylaws do not require an audit to be conducted every year. Is my condominium association following the law?*

2. If the governing documents do not mandate an audit be conducted every year, then the type of financial report your association must perform each year will depend on the association's total annual revenues without regard to the number of units. **NOTE: The provision allowing associations with 50 or fewer units to prepare an informal report regardless of the size of the budget has been removed.** A condominium association with the following revenues is required to meet certain accounting standards.
  - Compiled statement is basic and includes no assurances from a CPA and applies to budgets of \$150,000 - \$299,999
  - Reviewed statement is more in-depth and includes limited assurances from a CPA and applies to budgets of \$300,000 – \$ 499,999
  - Audited statement is most in-depth and includes the highest level of assurances from a CPA and applies to budgets of \$500,000+
3. The 'waive down' vote must occur before the end of the fiscal year and is effective for either the fiscal year in which the vote is taken or the following fiscal year, depending on how the question is structured.
 

**NOTE: The provision prohibiting cooperatives and condominiums from waiving the financial reporting for more than three consecutive years has been removed.**
4. HOAs have no statutory limitation on the number of years the owners can "waive down" financial reporting requirements
5. An association may prepare, without a meeting of or approval by the unit owners, a financial report that is MORE detailed than the minimum required by statute.

## Pooled Reserves

Associations may establish “pooled” reserve accounts instead of, or in addition to, individual reserve accounts. This means that an association may have a single source of funds to pay for multiple categories of reserve expenses. For example, if an association establishes a pooled reserve account for roof replacement, building painting and pavement resurfacing, funds may be drawn from this account to pay for any of the three items. Prior to the change in the rules associations were required to maintain separate accounts for each of these items and approval from the membership would be required in order to use funds from one category to pay for another.

**Note:** Unit-owner approval is required in order to use pooled funds to pay for any expenses that are not allocable to the categories included in the pool. Also, a pooled reserve account is not the same as a general deferred maintenance and capital expenditures account because the pooled account is restricted to the items specified in the pooled reserve schedule and a general deferred-maintenance-and-capital-expenditures account may be used for any items meeting the definition of these two terms. Consequently, a pooled account may meet the statutory requirements by including the items required by the law, *but a general deferred-maintenance-and-capital-expenditures account is not a reserve account* required by the law because it is not required to be based on any known expenses at the time the account is established

## Preparing the Pooling Schedule

Rule 61B-22.005(3)(b), F.A.C., provides that the amount of the current year contribution should not be less than that required to ensure that the balance on hand at the beginning of the period when the budget will go into effect plus the projected annual cash inflows over the estimated remaining lives of the items in the pool are greater than the estimated cash outflows over the estimated remaining lives of the items in the pool.

1. No balloon funding.
2. Must identify each item to be included in the pool, the estimated cost of replacement or deferred maintenance, and the remaining lives of each of the items within the pool



**Reserve Schedule Using the Pooling Method**

<b>Replacement Item</b>	<b>Total Estimated Life (Yrs)</b>	<b>Remaining Life (Yrs)</b>	<b>Cost</b>
Roof Replacement	12	1	\$95,000
Pavement Resurfacing	18	7	\$55,000
Building Painting	5	4	\$92,000
Elevator Repair & Modernization	25	14	\$20,000
Clubhouse Roof Replacement	12	1	\$60,000
Walkway Improvements	10	9	\$30,000

**4.2 - Continued Reserve Schedule Using the Pooling Method**  
**Projected Annual Cash Outflows**

Replacement Item	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14
Roof Replacement	95,000	0	0	0	0	0	0	0	0	0	0	0	95000	0
Pavement Resurfacing	0	0	0	0	0	0	55,000	0	0	0	0	0	0	0
Building Painting	0	0	0	92,000	0	0	0	0	92,000	0	0	0	0	92000
Elevator Repair & Modernization	0	0	0	0	0	0	0	0	0	0	0	0	0	20000
Clubhouse Roof Replacement	60,000	0	0	0	0	0	0	0	0	0	0	0	60000	0
Walkway Improvements	0	0	0	0	0	0	0	0	30,000	0	0	0	0	0
Total Projected Cash Outflows:	(155,000)	0	0	(92,000)	0	0	(55,000)	0	(122,000)	0	0	0	(155,000)	(112,000)
Beginning Cash Balance:	\$206,240	\$85,866	\$120,492	\$155,118	\$97,744	\$132,370	\$166,996	\$146,622	\$181,248	\$93,874	\$128,500	\$163,126	\$197,752	\$77,378
Annual Reserve Requirement:	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626	\$34,626
Ending Cash Balance:	\$85,866	\$120,492	\$155,118	\$97,744	\$132,370	\$166,996	\$146,622	\$181,248	\$93,874	\$128,500	\$163,126	\$197,752	\$77,378	\$4

## Pooling Method Reserve Schedule Disclosures

The schedule of deferred maintenance and capital expenditure reserve items for the pooling method includes the same items that are required for the segregated method as follows:

- All Required Deferred Maintenance and Capital Expenditure Reserve Items.
- Estimated Total Useful Life of Each of the Required Items.
- Estimated Remaining Useful Life of Each of the Required items.
- Estimated Deferred Maintenance or Cost of Capital Expenditure of Each of the Required Items.
- Estimated Total Fund Balance for the Pooled Reserves as of the beginning of the proposed budget year (end of the current year).
- The Required Funding for Proposed Budget Period for the Pooled Reserves.

The required funding for proposed budget period for the pooled reserves is the annual deposit that will be required, based on the current reserve analysis, in order to ensure that sufficient funds will be available when the anticipated expenditures take place.

**Hint: Formula driven spreadsheets make it a lot easier to prepare the pooling method reserve schedule.**

The steps to prepare the pooling method reserve schedule are:

### STEP ONE List All Reserve Items on the Schedule

The first thing to do when preparing the deferred maintenance and capital expenditure reserve schedule is to list *all* of the required reserve items. For purposes of this manual, we are going to create a reserve schedule that lists the following reserve items:

- Roof Replacement
- Elevator Repair & Modernization
- Pavement Resurfacing
- Clubhouse Roof Replacement
- Building Painting
- Walkway Improvements

In our example, Roof Replacement, Pavement Resurfacing, Building Painting, and Clubhouse Roof Replacement are required by the Condominium Act to be listed on the budget. Additionally, Walkway Improvements and Elevator Repair and Modernization must also be established because, in our example, it is estimated that the cost of the deferred maintenance or capital expenditure will be more than \$10,000.

**STEP TWO Determine the Estimated Total Useful Life of Each Item in the Pool**

Once you've listed the appropriate reserve items on the schedule, the next step is to determine the estimated total useful life for each reserve item and disclose the information on the schedule.

**STEP THREE Determine the Estimated Remaining Useful Life of Each Item in the Pool**

Once you have listed the estimated total useful life for each reserve item, the next step is to determine each item's estimated *remaining* useful life and disclose the information on the schedule.

**STEP FOUR Determine the Number of Columns in the Projected Annual Cash Outflows Section of the Table**

Each column in the projected annual cash outflows section of the table represents one year to be included in the analysis. The analysis must include at least the number of years (columns) equal to the longest remaining life of any item in the pool. In this example the longest remaining life is 14 years for the Elevator Modernization. Therefore, the minimum number of columns required for analysis is 14.

**STEP FIVE Enter Costs for Estimated Deferred Maintenance or Capital Expenditure of Each Item in the Pool**

Once you have created sufficient columns in the table determine each item's estimated replacement or deferred maintenance cost and write the amounts in the column reflecting its remaining life. Note that some items may be replaced more than once during the entire period under analysis. For example, Figure 4.2 shows that Building Painting will be done at the end of the remaining painting life of 4 years and will reoccur every 5 years from that date. After the amounts are listed for each item a total should be provided at the bottom of each column. This total represents the total projected annual cash outflows from the reserve pool.

**STEP SIX Enter the Estimated Beginning Cash Balance for Year 1**

The sixth step in preparing the reserve schedule is to determine the estimated fund balance of the reserve pool, as of the beginning of the period for which the budget is being prepared. Since the budget is usually prepared in advance of the new year, this requires an estimate of the amount that will be on hand at the end of the year. This can be done by determining the reserve pool balance on the date the estimate is being prepared, adding the monthly or quarterly funding requirement for the remainder of the year, and subtracting any estimated expenses that will be incurred during the remainder of the year. Enter this amount in the "Beginning Cash Balance" cell under Year 1.

Hint: Spreadsheet users create a formula making the Beginning Cash Balance for each year after year 1 equal to the Ending Cash Balance from the prior year. The formula for calculating the Ending Cash Balance each year is:

**Beginning Cash Balance less the Total Projected Cash Outflows plus the Annual Reserve Requirement.**

Copy this formula to the Ending Cash Balance cell for each year in the analysis.

**STEP SEVEN Compute the Annual Reserve Requirement**

The last step in preparing a pooling reserve schedule is to calculate the Annual Reserve Requirement. The Annual Reserve Requirement is the minimum annual deposit that, based on the reserve analysis, will ensure that the reserve pool will not have a negative Ending Cash Balance.

Note: Our example shows a level funding requirement each year during the analysis. While the rules do not specifically require a level funding requirement, this method cannot be used to simply fund the amount of reserves equal to the amount of cash outflows each year. The rules prohibit ballooning the payments, so the cost of capital expenditures and deferred maintenance projects must be spread over the life of the reserve items.

**How To Fund Reserves**

Rule 61B-22.005(6), F.A.C., requires that reserves be funded in a timely manner, at least as frequently as assessments are due from the owners, such as monthly and quarterly. This means that if assessments are collected monthly then 1/12 of the Annual Reserve Requirement must be funded (deposited to the reserve account) each month.

In addition, rule 61B-22.005(2), F.A.C., states that if operating and reserve assessments are collected as a single payment, the reserve portion of the payment must be transferred to the appropriate reserves within 30 calendar days from the date the payment was deposited in the operating account. The following situations are intended to illustrate the funding requirements and handling of operating and reserve funds:

**Example:**

Assume that the condominium documents require that assessments be collected on a calendar quarterly basis and reserves have not been waived, and assessments from unit owners are deposited on January 5, 2019. The association must transfer the reserve portion of that deposit to the appropriate reserve bank account(s) no later than February 4, 2019, and one fourth of the annual funding requirement must be set aside in the reserve account(s) not later than March 31, 2019, even if not all of the unit owners have made their quarterly payments. In other words reserves are required to be funded even if some unit owners are delinquent in their payments. Should your association experience chronic delinquencies it is a good idea to build a line item into the operating budget in order to ensure adequate cash flow to pay for all of the operating expenses and fund the reserves.

### **Interest on Reserves**

1. Interest on reserves stay in the fund unless approved in advance to go elsewhere
2. A fully funded reserve schedule must be included in the proposed budget
  - a. Reserve funds may be reduced or waived by a vote of the owners
  - b. 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.**
  - c. Those reserves that are not waived or reduced by a vote of the unit owners must be fully funded

### **Notice and Adoption of Budget**

1. The documents will specify who will adopt the budget
  - a. The Board, or
  - b. The membership
2. Budget meeting notice requirements
  - a. 14 day notice
  - b. Include copy of the proposed budget, reserve accounts and calculations
3. Budget approval meeting
  - a. Budget may be amended prior to adoption
  - b. A quorum is required
  - c. Adoption requires majority vote of quorum

**Sample Reserves Section of the Proposed Budget**

<b>SCHEDULE OF DEFERRED MAINTENANCE &amp; CAPITAL EXPENDITURE RESERVES</b>					
<b>(for the fiscal year of January 1, 20XX through December 31, 20XX)</b>					
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
Estimated Total Reserve Items Capital Expenditure (in years)	Useful Life	Estimated Remaining Useful Life  (in years)	Estimated Cost for Deferred Maintenance/  (\$)	Estimated Fund Balance as of 12-31-XX  (\$)	Funding Required for Proposed Budget Period (\$)
Roof Replacement	12	1	\$95,000	\$87,000	\$8,000
- Pavement Resurfacing	18	7	55,000	30,472	3,504
- Building Painting	5	4	92,000	19,968	18,008
- Elevator Repair & Modernization	25	14	20,000	8,800	800
- Clubhouse Roof Replacement	12	1	60,000	57,000	3,000
Walkway Improvements	10	9	30,000	3,000	3,000
<b>TOTALS</b>			<b><u>\$352,000</u></b>	<b><u>\$206,240</u></b>	<b><u>\$36,312</u></b>

**Examples of How To Compute the Vote To Use Reserves For Other Purposes**

Number of Units As Stated in Documents	50	100	150
Assigned Voting Interest in Documents	1 per unit	40 units get ½ vote each 60 units get 1 vote each	1 per unit
Quorum Requirement As Stated in Documents	Majority of Total Voting Interests	Majority of Total Voting Interests	30 Percent (or .3) of Total Voting Interests
	<u>How To Compute</u> 1 vote x 50 units = 50 voting interests  50 / 2 = 25  -therefore- majority of 50 = 26	<u>How To Compute</u> ½ (or .5) vote x 40 units = 20 voting interests  1 vote x 60 units = 60 voting interests  20 + 60 = 80 80 / 2 = 40  -therefore- majority of 80 = 40.5	<u>How To Compute</u> 1 vote x 150 units = 150 voting interests  .3 x 150 = 45  -therefore- 45 voting interests are required
Voting Interests Required by Statute To Use Reserves For Other Purposes	Majority of Voting Interests Present  <u>How To Compute</u> Must first establish quorum of 26  Vote Required = Majority of Voting Interests Present in Person or by Limited Proxy	Majority of Voting Interests Present  <u>How To Compute</u> Must first establish quorum of at least 40.5  Vote Required = Majority of Voting Interests Present in Person or by Limited Proxy	Majority of Voting Interests Present  <u>How To Compute</u> Must first establish Quorum of 45  <u>Vote Required</u> Majority of Voting Interests Present in Person or by Limited Proxy



## **Operating Expenses**

### ***The Budget***

Think of the budget as being a formal written plan of the association's projected expenditures for a given period of time. It's a very important item that communicates the board's plans for the association and significantly affects the operation of the association. Therefore, it's vital that the board takes the time to review the requirements in the statutes and the association's documents and to apply appropriate budgeting techniques.

It's also important that the board understands the importance of establishing an operating budget that reflects, as closely as possible, the association's projected expenses. The board is responsible for administering the affairs of the association and, by law, has a fiduciary relationship to the unit owners. By definition, a fiduciary is a person who stands in a special relation of trust, confidence, and responsibility in his or her obligations to others. If prepared properly, the budget can assist the board members in fulfilling this obligation. However, it takes careful planning to establish a budget that will ensure sufficient money is collected from the unit owners to cover all of the association's expenses.

### **(Excerpts from Florida Division of Condominiums, Timeshares and Mobile Homes)**

#### **Estimating the Association's Operating Expenses**

The main purpose of the operating section of the budget is to show the categories of expenses (usually called line items) that relate to the day-to-day operation of the association. In addition, it identifies how much money the board estimates will be spent for each item. This is not a simple process, but it can be made easier if accurate and complete accounting records are maintained. Something that must be kept in mind when preparing the budget is that the association's main source of income is the maintenance fees or assessments received from unit owners.

The Condominium Act requires that sufficient funds be collected in advance to pay all of the anticipated expenses. In other words, the board should not carry out the day-to-day operations of the association at a deficit or on the basis of special assessments.

Associations that budget properly for common expenses can reduce the financial hardships that special assessments can cause. Not only do special assessments occur due to insufficient reserve funding, they also occur when the estimated operating expenses are insufficient. If estimated properly, the budget will help the association fulfill its obligations, help the board monitor the association's financial progress, and help the unit owners understand what is planned for the upcoming year.

One of the goals in preparing this manual was to identify the basic procedures and minimum statutory and administrative rule requirements for preparing a proposed budget. The following ideas are presented to assist you with preparing accurate estimates for the budget.

#### **Historical Data**

The best information about future budgeting estimates can be obtained by comparing budget versus actual performance from prior years.

- Start with two to three years' worth of historical information.
- Identify problem-funding areas and determine why the association was not able to meet its projected budget limits.
- Identify trends in income and expenses so these trends can be incorporated into the proposed budget.

For example, if utility costs have been going up approximately two percent each year, increase the anticipated utility expenditure by two percent. Also, consider historical inflation rates. Even if past estimates were accurate, new estimates should be adjusted for inflation.

- Look to the future. Ask, “What is anticipated this year that should be incorporated into the proposed budget?”
  - Is the association involved in litigation in which expenses are anticipated?
  - Does the association need to hire additional employees this year?
  - Are increases in taxes or payrolls anticipated?
  - Does additional insurance need to be purchased for new employees?
  - Is there any additional day-to-day maintenance that needs to be performed?
  - Does the board have new plans for the association?
  - Will the cost of any association contracts or insurance policies be increasing?
  - What is the expected rate of inflation, and what aspects of the association’s operations will it affect?
- Involve the community.
  - Give owners the opportunity to be involved in the budget preparation process.
  - To accomplish this, many associations establish budget committees that gather information about needed improvements or maintenance, new state or federal requirements, or enhancements desired by the community.
  - Pull upon the knowledge and resources of the unit owners, and let them know their input is valued.
  - If owners are involved in the preparation process, they will more likely accept and understand the budget and the expenditures required by the association.

### **Budget Content Requirements**

The association will prepare an annual budget that must reflect the estimated revenues, expenses, and reserves schedule for the next fiscal year and the estimated surplus or deficit as of the end of the current fiscal year. Every member must have access to the final budget.

1. Condominiums and cooperatives are required to distribute the budget and it must include each of the following items:
  - a. Estimated common expenses for taxes, insurance, maintenance, utilities, administration, management and reserves
  - b. Fees (\$4 per unit) payable to the division
  - c. Total assessment due for each unit according to ownership share
  - d. If owners of limited common elements pay for maintenance, the budget must include a separate schedule for those expenses
  - e. Reserve schedule
2. The minutes must reflect adoption of the budget
3. Copies of the proposed and adopted budgets are part of association records
4. Homeowners’ association must also specify all fees paid by the association for recreational amenities regardless if owned by the association, the developer, or someone else

### **Contents of the Operating Section of the Budget**

The minimum requirements for the operating section of the budget are listed on this checklist:

#### **PROPOSED BUDGET CHECKLIST - Operating Section**

All estimated common expenses or expenditures of the association including but not limited to the following items:

- Administration of the association;
- Management fees;
- Maintenance;
- Rent for recreational and other commonly used facilities;
- Taxes upon association property;
- Taxes upon leased areas;
- Insurance;
- Security provisions;
- Other expenses;
- Operating capital
- Rent for a unit, if subject to a lease;
- Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expenses or assessments for common maintenance paid by the unit owners to the association;
- Fees payable to the division;
- Expenses for a unit owner;
- All estimated common expenses or expenditures stated on an annual basis;
- All estimated expenses shown on a monthly basis;
- Beginning and ending dates of the period covered by the budget; and
- The total assessment for each unit type according to the proportion of ownership on a monthly basis, or for any other period for which assessments will be due.

**NOTE:** If the association maintains limited common elements with the cost shared by only those entitled to use them, a separate schedule or schedules must be attached that contains the same disclosures as in the budget. The schedule(s) must show all estimated expenses specific to each limited common element including reserves for deferred maintenance and capital expenditures if applicable.

### **Budget Line Items Explained**

Unit owners and board members are often confused about the meaning of the required budget line items Operating Capital, Additional Expenses for a Unit Owner, and Rent for Recreational and Other Commonly Used Facilities. (These line items can be found in the right-hand column of the sample budget.) Operating capital is simply a built in surplus for the association. Additional Expenses for a Unit Owner are not common expenses to be included in the budget. Instead these expense disclosures notify unit owners of expenses they may incur. These expenses are *not* counted as expenses collectible through assessments, and are generally related to disclosures during developer control of the association. An example of this category might be maid service that is available on a pay as you want basis, but not a common expense of the association.

Rent for Recreational and Other Commonly Used Facilities refers to any facility the association uses but does not own. An example of this could be where a condominium is part of a large recreation association that operates recreational facilities serving the condominium unit owners. Since the unit owner pays assessments directly to the recreation association this expense will not be part of the condominium assessment, and is included for disclosure purposes.

### **Tips on Preparing the Budget**

One of the most common errors made in preparing the budget is failing to state the time period covered by the budget. Many associations fail to identify the year to which the budget applies. This can be a problem for future boards who are trying to pieces together historical data. Also, while the budget estimates are required to be presented on an annualized basis, there will be times that a budget will need to be amended for the remaining portion of a fiscal year, and putting the period covered by that budget is important in order to ensure that each unit owner was charged and paid the proper amount of assessments throughout the year. The time period covered must be a statement of the *range of time* that the estimated budget will cover.

You should consider using the same line items in the budget and the year-end financial report. Using the same line items will make it easier to compare the budget versus actual performance.

Look in the left-hand column on the sample budget, and locate the line item entitled, "Reserves." You will see the main category of Reserves and a listing of the individual reserve accounts beneath it. In our sample budget, these amounts are simply transferred from the reserves section of the budget to the operating section. Please note that the statutes and administrative rules do not require that the individual reserves be itemized under the main category of Reserves.

Although not required by the statutes and administrative rules, many budgets contain a revenue section. If the association expects to earn non-assessment revenues then assessment fees may be reduced. In our sample budget the owners' assessments would have been \$195 per month instead of \$180 if the non-assessment revenues had not been included. This is because the full amount of \$372,626 (next to Total Operating Expenses in the bottom right-hand corner) would have been used to compute the assessments. This is determined by taking the amount of \$372,626 (next to Total Operating Expenses in the bottom right-hand corner) and subtracting the anticipated non-assessment revenues of \$6,120 and \$20,906 for Interest Income and Other Income, respectively (in the upper left-hand column). The result is \$345,600. This amount is the assessment income that is anticipated for the budget year and can be found next to the line item entitled Regular Assessments in the upper left-hand column. So, instead of using the larger amount of \$372,626 from Total Operating Expenses to compute assessments, we are using the lower amount of \$345,600. This results in the lower assessment of \$180 per unit.

The budget must identify the total assessment for each unit type, according to the proportion of ownership, on a monthly basis or for any other period for which assessments will be due. As you can see in the bottom right-hand corner, the assessments for each unit are stated on an annual and monthly basis. The reason a monthly basis is stated is that, in our sample association, the documents require assessments to be paid on a monthly basis. If our sample association's documents required assessments on a quarterly basis, then the budget would identify the assessment amount on a quarterly basis. The documents for your association must be reviewed to determine on what basis assessments are paid.

### Sample Operating Section of the Proposed Budget

For the Fiscal Year January 1, 20XX through December 31, 20XX

<b>REVENUES</b>	
<b>Assessment Income:</b>	\$345,600
<b>Interest Income:</b>	
Operating Account	\$3,510
Savings Account	<u>2,610</u>
Total:	6,120
<b>Other Income:</b>	
Miscellaneous	\$108
Drinks	4,800
Fax	250
Laundry	9,640
Snacks	600
Games	<u>5,508</u>
Total:	\$20,906
<b>TOTAL REVENUES</b>	<b>\$372,626</b>
<b>Reserves:</b>	
Roof Replacement	\$8,000
Pavement Resurfacing	3,504
Building Painting	18,008
Elevators	800
Clubhouse	3,000
Walkways	<u>3,000</u>
Total	\$36,312
<b>Administration:</b>	
Accounting	\$5,004
Bad Debt	1,054
Annual Condominium Fee	640
Annual Corporate Fee	62
Insurance (D&O, Fidelity, Flood, P&C)	32,004
Legal	804
Licenses and Taxes	
Licenses	504
County	144
State	804
Management Fees	6,000
Office Supplies	2,400
Postage	<b>660</b>
Total	\$50,080
<b>Salaries:</b>	
Casual Labor	\$204
Maintenance Staff	80,012
Payroll Taxes	15,004
Worker's Compensation	<b>17,600</b>
Total	\$112,820
<b>Maintenance and Repair:</b>	
Buildings	\$8,004

Elevators	4,000
Fire Systems	3,000
Grounds	7,008
Supplies and Tools	8,008
Swimming Pool	6,408
Tennis Courts	660
Laundry	5,000
Miscellaneous	<b>504</b>
Total	\$42,592
<b>Utilities:</b>	
Electricity	\$23,004
Pest Control	4,008
Sanitation	14,004
Sewer	28,500
Telephone	1,404
Water	<b>12,504</b>
Total	\$83,424
<b>Vending:</b>	
Drinks	\$2,000
Fax	120
Soap Products	3,000
Snacks	360
Games	<b>120</b>
Total	\$5,600
<b>Other Expenses:</b>	
Security	\$25,008
Rent for Recreational / Other	0
Commonly Used Facilities	0
Taxes on Association Property	0
Taxes on Leased Areas	0
Operating Capital	
Special Enhancements	7,250
Contingency	<b>9,540</b>
Total	\$41,798
<b>ADDITIONAL EXPENSES FOR A UNIT OWNER</b>	
Rent For Unit Subject To Lease	0
Rent Payable by Owner Directly to Lessor	0
Under Recreational Lease / Lease for	0
Commonly Used Facilities	0
Total	\$0

**EXPENSES FOR ASSOCIATION & CONDOMINIUM**

<b>MONTHLY OPERATING EXPENSES</b>	<b>\$31,052</b>
<b>NET INCOME (LOSS)</b>	<b>\$0</b>
<b>ASSESSMENTS FOR EACH UNIT (160 units)</b>	
Annual	<b>\$2,158</b>
Monthly	<b>\$180</b>
<b>OPERATING EXPENSES (w/o reserves)</b>	<b>\$336,314</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$372,626</b>

**Common Surplus**

“Common surplus” is all funds remaining at the end of the fiscal year after all expenses have been paid. Common surplus is owned by unit owners in the same shares as their ownership interest in the common elements.

1. Condominiums and Cooperatives must do one of the following with common surplus:
  - a. Return to owners
  - b. Reduce assessments
  - c. Apply to reserves
2. Homeowners’ associations refer to the governing documents

**Investing Association Funds**

The association should have a written policy with regard to investment of association funds. The board of directors should monitor the investment to ensure compliance with the policy and review and update the policy from time to time. Section 718.111(14), F.S., prohibits associations from commingling operating and reserve funds except for investment purposes. Investment purposes means that there is an expectation of a return on the principal deposits. While the Condominium Act does not restrict the types of investments that associations may use to generate a return on its funds, there are a few things that managers should keep in mind about investing association funds.

1. CAMs and board members have a fiduciary duty to the membership requiring prudent investment decisions that carefully consider risk and return.
2. Board members should consider the deposit limits that are insured by the federal government. The risk to association funds can be limited by spreading the bank accounts out so that no one account has excess exposure.



3. Associations should also consider using separate accounts for operating and reserve investments.
  - a. Since most associations collect monthly assessments, the operating cash should be highly liquid (readily available) and is usually kept at a level necessary to cover monthly expenses, plus a cushion.
  - b. Reserve funds are usually maintained with less liquidity in mind and generally have higher average balances in the accounts than operating funds.
  - c. Using a separate account for the restricted fund investments is also a good control procedure that helps ensure that the board does not unknowingly spend funds that are set aside for one purpose on something other than what was intended.
4. Tax implications of the association investment decisions are beyond the scope of this course. You should seek the advice of your tax professional before making your investment decisions.
5. While a director can delegate investment authority to fellow directors or third parties, they must continue to supervise and monitor these activities. You can delegate authority, but cannot delegate responsibility.
6. Check the governing documents to determine if there is language hindering a well-thought out investment plan. You may need to amend to implement a suitable investment policy.

## ASSESSMENT REQUIREMENTS

Expenses and reserves are funded primarily by assessments that are charged to the unit owner (condominium), shareholder (cooperative), or parcel owner (homeowners' association). Due dates and delinquency dates are established by the governing documents or by action of the Board. Statutes establish certain protections for members.

Before you can compute the assessments, you must know three things:

1. How assessments are allocated among the units.
2. The number of units in the condominium or cooperative.
3. How often the assessments are to be collected.

The first step is to identify how the assessments are allocated among the units. This information can be found by referring to the documents. Keep in mind that the law regarding sharing assessments may change, and your condominium documents may differ. Since the percentage that you share assessments cannot change without your approval, this is one of those items in the declaration that cannot be changed when the law is changed. For *condominiums* created after April 1, 1992, the allocation must be based on either an equal fractional basis or the units' square footage of the unit relative to the total square footage of all of the units.

The second step identifies the number of units in the condominium. Again, the documents will provide this information. The number of units is important because you must have this information for the formula that will be used to compute the assessments.

The last step before computing the assessments is to determine how often the assessments are to be collected. The Condominium Act states that assessments must be made against units not less frequently than quarterly. This just means that owners must be assessed at least four times a year - not one, two, or three times a year. The documents, usually the bylaws, should identify the frequency of the assessments. Look at the sample document language on the next page that sets forth these three critical pieces of information. *(The pertinent language is underlined and italicized.)* Remember that documents are unique. The language you will see here will likely be different than that of your documents.

### Sample Language from the Declaration of Condominium

**Percentage of Ownership of Common Elements:** The undivided share in the Common Elements and Common Surplus, which are appurtenant to each Unit, shall be computed upon the following basis:

Upon recordation in the county records, each unit shall have an undivided share in the ownership of the common elements and the common surplus established on an equal fractional basis. This shall be equal to one/three-hundredths (1/300th). The interest in the ownership of the Common Elements and the Common Surplus for each unit shall be ascertained by dividing one (numerator) by the total number of Units (denominator); the resulting number being the undivided interest expressed in decimals of ownership of the common elements and the common surplus attributable to each unit.

**Common Expenses and Common Surplus:**

Common expenses of the association, as defined hereinabove, shall be shared by all unit owners in accordance with an undivided share in the ownership of the Common Elements and the Common Surplus attributable to each Unit, as set forth in the paragraph above.

**Number of Units:**

Upon recordation in the county records, there shall be three-hundred (300) units.

**Assessments:** The assessments shall be collected from the unit owners on a monthly basis due and payable by the fifth of every month.

In this association, the assessments are allocated on an equal fractional basis of 1/300ths which, in this case, means everyone will pay the same amount in assessments. You can find this information under the headings “Percentage of Ownership of Common Elements”, and “Common Expenses and Common Surplus.” The number of units (300) is very clear in this case. The documents also indicate that assessments will be collected monthly.

Once you’ve obtained these three bits of information, you’re ready to compute the assessments. Chapter 5 indicated that the operating section of the budget must identify the assessments for each type of unit (units with different ownership shares). Remember that the assessments must be shown on an annual basis as well as for the time period for which they are due. The formula for calculating the per unit assessment is as follows:

Total Operating Expenses - Anticipated Revenues = Total Amount to be Assessed.

Total Amount to be Assessed x Ownership Share = Total Assessment Per Unit.

Total Assessment Per Unit / Frequency of the Assessment = Periodic Assessment (Monthly, Quarterly, Etc.).

## Special Assessments

“Special assessment” means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

### Statutory Procedure to Adopt a Special Assessment

Section 718.112(2)(c), Florida Statutes specifies the following requirements:

1. Written notice of any special assessment levied by the association must be delivered to each unit owner, including a statement of the specific purpose or purposes of the assessment.
2. The notice shall specifically state that assessments will be considered and advise the nature, estimated cost, and description of the purposes for the assessments; and
3. A meeting must be scheduled and written notice with agenda delivered and posted conspicuously on the condominium property not less than 14 days prior to the meeting;
4. The 14-day notice affidavit must be executed by an officer and filed among the official records of the association;

Failure to comply with notice requirements in connection with the adoption of a special assessment can result in loss of ability to obtain enforcement of the collection of an assessment from a defaulting unit owner.

The money from the special assessment may be used only for the special purpose. Excess funds are considered common surplus.

### Late Fees and Charges

1. Late fees and interest must be authorized in the bylaws or declaration and must be within limits
  - a. Maximum interest is 18%
  - b. Maximum late fee is greater of \$25 or 5% of installment
2. Payments are applied as follows
  - a. Interest
  - b. Late fee
  - c. Collection cost
  - d. Past due assessment
3. Assessment cannot be reduced for an individual, but late fees, collection fees or interest may be waived or negotiated; No special deals on assessments

**Management Collection Fees**

The association is entitled, by statute, to collect interest, late fees, attorney fees and costs. In addition to these fees charged by the association, many management companies charge a fee to delinquent owners if they send collection letters or take other action to collect a delinquent assessment. There is no statutory authorization to charge these management collection fees and, therefore, no limit on the amount or method of computing them.

**FINANCIAL RECORDS, REPORTS AND STATEMENTS**

Each community association is required to maintain detailed permanent records of each member's assessments. They are also required to prepare financial reports, keep financial records and file tax returns in compliance with applicable statutes.

**Associations are Being Sued Over Claimed Billing / Estoppel Errors**

Some new owners are filing lawsuits when the association tries to collect delinquent fees it is alleged they are not entitled to collect. For example, a first mortgagee was recently billed not only for 12 months of delinquent assessments, but also for late fees for the entire duration of the delinquency, attorney's fees incurred by the association in connection with the bank's foreclosure and a host of other charges that became due before the Certificate of Title was issued. In another case the buyers were billed for the entire delinquency on the account, even though the association was the previous owner. It's a good idea for CAMs to prompt association boards to speak to counsel about the appropriate amount to bill new owners for past-due balances.

**The Association's Accounting Information System**

1. Design the accounting system in accordance with the association's size and budget.
  - a. The accounting information system for a very small association may consist of index cards and a check register.
  - b. As the size of an association increases, the level of sophistication of its accounting information system increases.
  - c. Make sure the system is organized properly and is able to produce the accounting records required by the Condominium Act and the related administrative rules.
2. Consider purchasing a *general ledger* software program that's user-friendly and easy to update.
  - a. It should be designed for condominium associations or easy to adapt to fund accounting. (Fund accounting will be explained below)
  - b. The program should make the process of updating the books faster, easier, and more accurate by having specific codes assigned to all revenue and expense accounts.
  - c. Purchasing this type of software is generally more feasible for medium to large associations that have numerous monetary transactions.
  - d. It's usually more expensive than other software packages, such as spreadsheet programs, that may be useful for smaller associations.

*Example*

The Condominium Act requires the association to maintain a current account and a monthly, bi-monthly, or quarterly statement of the account for each unit designating the name of the unit owner, the amount of each assessment, the due dates, the amounts paid upon the account, and the balance due. Assume that the unit owners are billed for assessments on a quarterly basis. The Subsidiary Accounts Receivable Ledger for assessments has a separate ledger page for each unit. The Accounts Receivable Subsidiary Ledger for unit owner Joseph Miller is as follows:

**Sample Accounts Receivable Subsidiary Ledger**

Joseph Miller		Unit 210		
Date	Amount Due	Description	Payment Made	Balance
1/1/17	\$100	First Quarter's Assessment	-	\$100
1/5/17	-	Paid Check Number 2319	\$100	\$0
3/1/17	\$100	Second Quarter's Assessment	-	\$100
3/3/17	-	Paid Check Number 2342	\$100	\$0
6/1/17	\$100	Third Quarter's Assessment	-	\$100
6/5/17	-	Paid Check Number 2360	\$100	\$0
7/10/17	\$200	Special Assessment for Pool Repair	-	\$200
8/8/17	-	Paid Check Number 2385	\$200	\$0
9/1/17	\$100	Fourth Quarter's Assessment	-	\$100

Consider maintaining a Chart of Accounts. This chart is simply a listing of the titles and the numbers, or codes that have been assigned to the ledger accounts. It's like an index that helps facilitate the process of entering revenue and expense amounts.

A short explanation next to each of the accounts should be included.

*Example*

The bookkeeper is in the process of posting assessments paid by the owners, and the amounts paid by the association for utilities and cable. Instead of having to memorize the different numbers assigned to each ledger account, the bookkeeper can refer to the Chart of Accounts, locate the ledger account number that corresponds to each account title (Assessments, Utilities, and Cable), access that account number in the accounting records, and post the amounts.

**Accrual Basis of Accounting and Cash Basis of Accounting**

1. The accrual basis of accounting means revenues are recognized when they are earned and expenses are recognized when they are incurred, regardless of when cash is received or disbursed.

*Example*

Assume that your association receives a bill for pool work performed in June with a due date for payment in July. Using accrual basis accounting the transaction is recorded on the books in June even though the payment of cash will not occur until July.

2. The cash basis of accounting recognizes revenues when received and expenses when paid.

*Example*

Using the above example, under the cash basis the bill for pool work is recorded on the books in July instead of June. This is because the actual flow of cash will occur in July when the bill is paid. The main advantage of the cash basis of accounting is that it's a relatively simple method to apply. In very small associations, it may be the most practical method to use due to its simplicity.

3. Under the cash basis the results of operations can be manipulated by timing the payment of bills. The accrual basis is less susceptible to manipulation, but is little use without a balance sheet to indicate which of the revenues are still outstanding or which expenses have yet to be paid. Also, the accrual basis is not as straight forward or intuitive as the cash basis.